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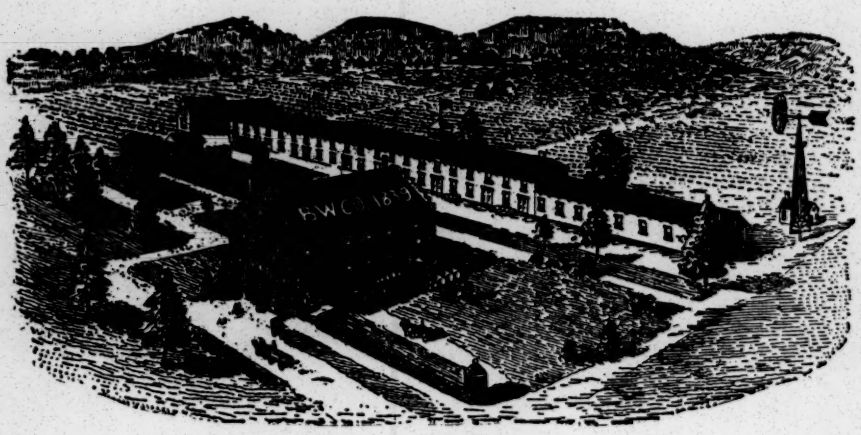

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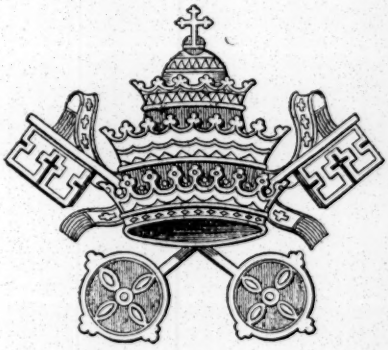

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ST. THOMAS, THE CHURCH AND THE MYSTICAL BODY.

A CERTAIN amount of vagueness is attached to the term Mystical Body because it can be used in at least three different senses. St. Thomas however has a definite meaning in mind when he speaks of the Mystical Body and there are advantages in his view that are not possessed by any other.

In the first place, those who put the emphasis upon *body* are inclined to identify the Mystical Body with the visible Church —the so-called body of the Church as opposed to its soul. This tendency has been strong since the time of the Reformation and the controversies with the Protestants over the nature of the Church. The Mystical Body in this view is an organizational or jurisdictional term, and as such it is regarded by many to-day. There are however obvious disadvantages in identifying the Mystical Body exclusively with the visible Church. Who would deny a catechumen who makes an act of perfect love or contrition membership in Christ's Mystical Body? Yet he does not belong to the visible Church until he is baptized. Besides, this view does not sufficiently account for the term *mystical*. There is a sense in which mystical is righly applied to the visible Church, as we shall see, but if we are considering the Church from the point of view of organization it would seem better to refer to it simply as the body of Christ, as St. Paul does, without making use of the term *mystical* at all.

Hence, others seek the clue to the meaning of the phrase, the Mystical Body of Christ, in the adjective *mystical*. What is the meaning of that enigmatic word in its present context? All are not agreed. For many, " mystical " is the same as *mysterious*, and they look for certain mysterious bonds that link men with Christ, whence they can be called His Mystical Body. These bonds are primarily sanctifying grace and the virtue of charity. All who are in the state of grace accordingly form Christ's Mystical Body even though they may not actually belong to the visible Church. This is the so-called soul of the Church which is now made equivalent to the Mystical Body. Those who are in the state of grace, while they are not the physical members of Christ's body, yet are more than merely morally united to Him. In a moral union there is no objective reality that binds the members together—all they have in common is community of interests. Grace however is not a mere moral

entity; it is an objective reality, though supernatural and accidental. Since the bond that links the members with Christ and with one another is mysterious yet real, we can, for lack of a better term, designate the union as *mystical*. Once we use it, the suitability of the term becomes apparent.

An awkward situation arises at once. Suppose a Catholic falls from grace through mortal sin but does not give up the faith—a more or less common event. He is still a member of the visible Church, but is he a member of the Mystical Body? In other words, is the Mystical Body composed only of the saints? This difficulty is felt by those who make the Mystical Body co-terminous with the state of grace and they modify their position accordingly. There is another mysterious bond that serves to bind us to Christ and that is the virtue of faith. As long as we retain the faith, we belong to His Mystical Body. What is now important is to have at least one of these mysterious links with Christ and the least we can have is faith. The Mystical Body thus becomes a spiritual rather than an organizational term and refers to the union of men with Christ and with one another through the spiritual bonds of faith, charity and grace.

For St. Thomas however the Mystical Body is not quite the same as either the visible Church or the union that is formed by the spiritual bonds of faith and charity. The principle of unity that unites the members of the visible Church is the common possession of faith and baptism, as the principle of unity of the spiritual Church, the Communion of Saints, is the common possession of sanctifying grace. The Mystical Church or the Mystical Body of Christ is a much wider term and to understand it we must look closely at both the words we are using, *Mystical* and *Body*.

In the first place St. Thomas makes it clear that when he is using the terms " body " and " head " and " members " he is speaking metaphorically.[1] In the same figurative way he refers to the Holy Spirit as the " heart " of the Mystical Body.[2] The " members " (another metaphor) of this body of which Christ is the head are all men, including even infidels, heretics, sinners and those who lived before the coming of Christ.[3] In what

[1] *Summa Theologica*, 3, 8, 1 corp. and ad 2; 3, 19, 4 ad 1.

[2] *Op. cit.* 3, 8, 1 ad 3. Cf. 3 *Dist.* 13, q. 2, a. 2, sol. 2, where the Holy Spirit is called the soul of the Mystical Body.

[3] *Op. Cit.* 3, 8, 3.

sense however can all men from the beginning of the world to its end be called members of Christ's Mystical Body? Evidently the principle of unity that unites all men as His Mystical Body cannot be the same as the principle of unity that makes of some men either His visible Church or the Communion of Saints. The term " body " will not help us, since that is applicable also to the visible Church; we must then turn to the term " mystical " and see if that will give us light.

What does our Saint understand by the term *mystical?* He gives us no formal explanation, but in the *Sed Contra* of a. 3, q. 8, p. 3 of the *Summa Theologica* he makes it clear that his viewpoint is that of the Redemption when he speaks of Christ as the head of His Mystical Body, the Church. Quoting 1 Tim. 4:10 and 1 John 2:2 he shows that Christ is the head of all men because He came into the world to save all. This of course is the Mystery *par excellence* spoken of by St. Paul in Ephesians 3: 1-13: " The mystery has been made known to me . . . which in other generations was not known to the sons of men . . . that the Gentiles should be fellow heirs and of the same body, and co-partners of His promise in Christ Jesus; " and " the mystery of His will " was " to reëstablish all things in Christ, that are in heaven and on earth, in Him " (ibid. 1:7-10). The purpose of God to save all men without distinction of any kind is rightly called a mystery by St. Paul because it was something kept secret from the members of his race and when they heard him preach it they were shocked and could not understand it. We can feel confident that St. Thomas when he speaks of the Mystical Body is using the term *mystical* with the thought of the Mystery of St. Paul in the background. He is using it in the same redemptive sense and it means for him that all mankind from the point of view of the Redemption forms one body under Christ, who is the head because He is the Redeemer.[4]

It is also in this sense that he uses the term Church in these articles on the Mystical Body. The Church for him in this connexion is not the same as either the visible Church or the spiritual congregation of the saints, those who are in the state of grace. The visible Church is not actually universal since

[4] The Angels belong to the Mystical Body of Christ (a. 4) not because they were redeemed but because He is over them and they feel His influence by way of an accidental increase in beatitude.

baptism marks off those who come under her jurisdiction from those who do not. The spiritual bonds of faith and charity also link together some but not all of the inhabitants of this globe. It is only from the standpoint of the Redemption that all men without exception form a unity, a body, a Church, under Christ as the head. All humanity therefore from this point of view, viz. of the Redemption, constitutes the Mystical Body of Christ.

In the body of the article in question St. Thomas shows how all men belong to Christ's Mystical Body. He points out the difference between a natural body and the Mystical Body. In a natural body the members are all present simultaneously; in the Mystical Body this is not the case. The " body of the Church " is composed of men who lived from the beginning of the world even to its end. Besides, the possession of sanctifying grace is not a necessary characteristic of the Mystical Body, since the members may have it or loss it from time to time and at any one time not all the members are in the state of grace. Looking therefore over the whole course of the world's history Christ is the head of all men simply because He came to save all without exception and laid down His life for them all. Unfortunately not all obey Christ and of those who obey Him not all remain faithful to the end. He remains the head of all nevertheless and all men belong to His Mystical Body, the Church, but in different grades or degrees, depending on the degree of closeness to the Head through grace and glory.

Some are actually united with Him through the beatific vision in heaven or through charity on earth. These are what we call His living members. Others are actually united with Him on earth through the possession of faith alone without grace. These are the so-called dead members. Then there are those on earth who are not yet united with Christ either by faith or by grace but who, He foresees, will one day be His. At present they are only potentially united to Him and that is sufficient to put them under Christ as their head. Finally there are those who are not and who never will be united with Christ by faith or grace. However, as long as they are upon earth they are at least potentially united with Him and as such they belong to His Mystical Body, the Church, and He is their head. The mere fact that Christ died to save all, whether they will

actually be saved or not, is the reason why He is the head of all men and all men without exception constitute His Mystical Body. The only ones who entirely cease to be the members of Christ are the finally impenitent in the next life. While they were upon earth they were at least potentially united with Him and as such belonged to His Mystical Body; now they are no longer in potency to be one with Him and their membership in the Mystical Body expires. Only in the light of the great Mystery of St. Paul can we understand the all-inclusive character of the Mystical Body of Christ, the body of the Church, as St. Thomas explains it. The universality of the redemptive will of Christ is the key that unlocks all difficulties.

Christ's Mystical Body therefore is not circumscribed or restricted in any way. St. Thomas shows how this is so from the point of view of grace and baptism: infidels, heretics, sinners, those who lived under the Old Dispensation—all belong to Christ's Mystical Body and come under His headship simply because they are the objects of His redeeming will as well as ourselves. This doctrine must have come as a shock to many of St. Thomas's contemporaries when heresy and infidelity were looked upon with horror and Jews and Mohammedans were so often regarded as beyond the pale.

To-day the danger lies in a different direction. Men are divided as they never were before, but now along social, racial, political and so-called " ideological " lines. We priests however can never lose sight of the fact that every man, no matter whether he is rich or poor, employed or unemployed, a capitalist or a laborer on strike picketing his employer's plant, a Nazi, a Fascist or a Communist, a Loyalist or a Nationalist in Spain, belongs to Christ's Mystical Body, since He shed His blood to save and redeem him as well as ourselves.

We can never restrict our ministry to any one group or class if we are the dispensers of the means of salvation and salvation is intended for all. In our zeal for social justice we may take our place on a picket line, but the dispensers of the mysteries of God may never set up a boycott against any man or any group of men no matter what their social or racial or economic theories and practices may be. The detested capitalist, the fanatical Communist, the rabid Nationalist and the deluded Loyalist, all belong to Christ's Mystical Body and if they are not active,

living members, who knows whether the fault cannot be laid at the door of those who in their smugness believed and acted as if the Mystical Body was a closed corporation?

The dominant note of St. Thomas's conception of the Mystical Body is universality—it is all humanity considered as the object of God's redeeming will. Does this mean that there is no particular benefit in belonging to the visible Church since one is already a member of Christ's Mystical Body by the fact that he is a human being? Only a clear understanding of the relation of the visible Church to the Mystical Body will clear up a misunderstanding like this.

The question, " What particular benefit is there in belonging to the visible Church if we all belong to Christ's Mystical Body anyway? ", is curiously reminiscent of the question that Saint Paul puts and answers in the third chapter of his Epistle to the Romans. In the previous chapter he had pointed out that mere membership in the race of Abraham does not justify a man, so that even the Gentiles have an equal opportunity under Christ to be saved. Naturally from a Jew comes the objection: " What advantage then hath the Jew, or what is the profit of circumcision? " St. Paul's response is prompt: " Much every way. First indeed, because the words of God were committed to them."

It is as true now as it was then that salvation or Redemption is open to all humanity and this is what we mean when we say that all men on earth without any exception constitute Christ's Mystical Body. This is the Mystery *par excellence* that St. Paul was commissioned to preach. It is difficult for us now to enter into the mind of those who heard this message for the first time. It came, to speak anachronisticly, like a bombshell, upsetting all their preconceived notions on the exclusiveness of salvation. Christianity changed all that, but the important point to remember is how the change took place.

What was it that Christ launched into the world? An idea? A concept? Was He like some genius in mathematics who discovers a new theorem or formula and merely makes it known to others by speech or writing and the innate force and truth of the idea is sufficient of itself to keep it going long after he is dead? Unfortunately, ideas do not propagate themselves and ideas that change men's lives need something more than their

intrinsic truth to make them not only attractive but accepted by men. It is men who carry ideas to other men and when men have a cause that appeals to them they band themselves together for the mutual aid and encouragement they get from close association, and their union with one another enables them to make better headway in spreading their cause among men. This is the great advantage the Jews had over the Gentiles. They were the depositories of God's revelation—" the words of God were committed to them " and they were immeasurably better prepared for the completion of that revelation in Christ than were the Gentiles who knew not God.

Is not this the way men naturally and normally act? Karl Marx had an idea, but where would that idea be if it simply remained an idea? Men banded themselves together in an organization who believed in that idea and if the idea is alive to-day it is because there has been a Socialist party and a Communist organization to keep it alive.

Now that is exactly the reason why there is a visible Church. If Christianity were only an idea launched upon the world, it would have suffered the same fate as the idea of Socialism without a Socialist or Communist party to keep it alive. By now it would be only a memory to take its place with the dimly remembered views of some ancient philosopher. " Outside the Church there is no salvation " expresses the fundamental truth of human nature that, apart from a visible organization to perpetuate it, no cause and no message, not even the message of salvation, can hope to survive in this world.

Besides, we must never lose sight of the fact that Christianity is not only a truth to be believed but a life to be lived. That life is the antithesis of the disordered life of humanity left to its own resources. In spite of the material progress that undoubtedly has been accomplished in the past few centuries, can we say that human life as such, the moral and spiritual life of man, has shown a similar marked improvement when left to its own devices? Is the private morality of the natural man any better now than it was, let us say, under the Caesars? Is it as good among civilized peoples as it is among so-called primitives and savages? As for public morality, why is it that evolution and the gradual improvement of human relations under natural progress leave us with class warfare and race hatreds and national

rivalries and conflicts more bitter and extensive than ever before? If there is one lesson that experience teaches, it is that human beings need to be helped not only socially and economically and politically and culturally, but morally as well. The need for help in those other fields is so evident that it is taken for granted. The need is no less urgent in the moral field: why do we not with equal promptness look about for help?

We have not far to look, for the help is at hand. The visible Church, the Body of Christ, is not only a teaching agency to make known to us the Word whereby we can know what the rightly-ordered life is, but it also gives us the means adapted to our nature that will enable us to live this life instead of contemplating it at a distance. Human life embraces the body as well as the soul and the means that Christ has entrusted to the Church to administer are visible as well as invisible: they help the body as well as the soul. They are the Sacraments, the sacred mysteries or rites which not only symbolize the Redemption but actually confer its benefits upon those who receive them. By the sacred rite or mystery of Baptism we are incorporated in the living Christ and made members of His Body, the visible Church. The term " mystery " is applied to Baptism, the Eucharist and the remaining Sacraments for no other reason than that they symbolize the Mystery of Redemption and make that Mystery a reality in the lives of men. For the reason that we are joined to the visible Church by the " mystery " of Baptism and receive from her the Eucharist and the other sacred " mysteries " we are justified in calling her the Mystical Body of Christ, not in any exclusive sense however and without prejudice to that wider body which St. Thomas has in mind when he speaks of the Mystical Body.

There is then a twofold " mystery ": first, the " mystery " of the redemptive will, which embraces all men and constitutes them members of Christ's Mystical Body in the universal sense; then, the " mystery " or sacred symbol of Baptism and the other Sacraments which makes men actual and living members of Christ and constitutes them members of His Mystical Body in the special sense of the visible Church. There is but one Mystical Body of Christ however, as there is but one Mystery of Redemption. There may be as many aspects of this one Body as there are aspects of the Mystery by which it is designated.

When we consider the Redemption in the mind of God as intended for the entire human race we can speak of all mankind as forming the Mystical Body of Christ, since all men on earth are at least potentially united with Him. If however we consider Redemption as an accomplished fact that is applied to men through the sacred mysteries of Baptism, the Eucharist and the other Sacraments, we can call the visible Church the Mystical Body of Christ, since her members are actually united with Him through the reception of these sacred mysteries of which she is the guardian and administrator. Finally, considering Redemption as the outpouring of spiritual life into the soul we can refer to those in the state of grace as the Mystical Body of Christ, since they are His living members, actually united with Him by the invisible, supernatural, real yet mysterious, bonds of grace and charity. The adjective "mystical" always points to the Mystery of Redemption and since that Mystery is one, though presenting many aspects, there can be only one Mystical Body, the Mystical Body of Christ, the one Mediator and Redeemer.[5] The visible Church and all humanity do not form two mutually exclusive Mystical Bodies, for they are but different aspects of

[5] Historically the term "mystical body" does not occur in the New Testament, nor is it found in the Fathers to designate the Church, the body of Christ. Bishop Meyers in *The Mystical Body of Christ* (Treasury of the Faith Series, Macmillan, New York, 1931, p. 27) points out that St. John Chrysostom used the "mystical body" to designate the Eucharist, and that patristic use of the term persisted in Rabanus Maurus (d. 856) and in Paschasius Radbertus (d. 851). Alexander of Hales (d. 1245) in his *Universae Theologiae Summa* (ed. 1622, vol. 2, p. 73), when treating of the grace of Christ and His Headship of the Church, uses the term "mystical body" of the Church. William of Auvergne (d. 1249) and Albert the Great (1206-1280) use it in this sense, which was common from the early thirteenth century.

Is there a Mystical Body of Satan? This expression, which is being used to-day, can be found in St. Thomas, *Opusculum* 58 (Rom. ed.) entitled "De Venerabili Sacramento Altaris," cap. 14. This however is an apocryphal work which really belongs to St. Albert the Great (cf. Mandonnet, *Des Écrits Authentiques de S. Thomas d'Aquin*, Fribourg, 1910, p. 155). St. Thomas in his authentic works speaks of the devil as the head of all the wicked, but he is careful to point out that he is not the head of the wicked in the same way that Christ is the head of the Mystical Body, since he cannot influence them interiorly, as Christ does, and therefore he is their head only because they imitate him (*Summ. Theol.* 3, 7-8). This means that there is only a moral union between the devil and his followers, while between Christ and His members there is an ontological bond, at least the bond of actual grace. The "mystery of iniquity" in 2 Thess. 2:7 means the secret working of evil in this world; and that is what St. Thomas means when he calls it *iniquitas mystica* in his commentary on 2 Thess., cap. 2, lect. 2. "Mystery" and "mystica" in this context mean no more than secret, hidden, and contain no reference to the great Mystery after which the Mystical Body of Christ is denominated. There is a latent repugnance between the terms "Mystical Body" and "Satan" which St. Thomas seems to have felt since he studiously avoids joining these terms when he had every opportunity to do so.

one reality. The Mystical Body of mankind includes the visible Church, while the visible Church is the actualization of the redemptive potentialities of mankind.

What then is the advantage of belonging to the visible Church? "Much every way." You will never save your soul by mere membership in the Mystical Body of Christ. It is actual and living membership that counts for salvation and the visible Church is the agency placed in this world by Christ to transform by the Word and the Sacraments His potential and dead members into active, vigorous limbs of that organism whose Head is Christ. The visible Church is necessary as means are necessary to an end. She is the means of turning Redemption from a possibility into an accomplished fact. When we say that all mankind is the Mystical Body of Christ we are using a metaphor to express the great truth that all men belong to Christ simply because He has died to save all without exception. The members of the Mystical Body however are united with Christ, their Head, in varying degrees and, what is most important to remember, salvation depends upon the degree in which we are united with Him. A man who has neither faith nor grace belongs to the Mystical Body indeed, but he is only potentially united with Christ and cannot be said to be in a state of salvation. The same is true for one who retains the faith but is not in the state of grace: he is a member of the Mystical Body but he cannot be saved until he becomes a living member again through the recovery of sanctifying grace. Now that is the business of the visible Church in the world: to make men and keep them actual, living members of the Mystical Body of Christ.

"Outside the Church there is no salvation" now takes on another meaning. God of course is not confined by His sacraments and He can bestow His grace where He will, but just as in the Old Dispensation it was necessary to have recourse to the depositaries of the Law to learn the way of salvation and then submit to it, so now it is necessary to have recourse to the visible Church and submit to her as the depository of the means of salvation. Any exception that God himself might wish to make then or now serves only to establish the rule more firmly for us. No less an opponent of the claims of the Catholic Church than John Calvin clearly perceived the necessity of belonging to the visible Church. In the Institutes of the Chris-

tian Religion, bk. 4, ch. 1, n. 4, we read: "But as it is now our purpose to discourse of the visible Church, let us learn from her single title of Mother how useful, nay, how necessary the knowledge of her is, since there is no other means of entering into life unless she conceive us in the womb and give us birth. . . . Moreover, beyond the pale of the Church no forgiveness of sins, no salvation, can be hoped for, as Isaiah and Joel testify." Calvin may differ from us as to *which* is the visible Church of Christ; he agrees with us concerning its necessity.

The need of a visible organization to propagate an idea that is a way of life is evident in the world to-day. The Communist, the Fascist and the Nazi idea and way of life are not mere abstractions and ideals that men think about and talk about—and let it go at that. Each one of them is firmly entrenched in an organization, a party and a state, that see to it that the idea is a living actuality. Nearer at home, have not we Catholics always had some fine ideas about social and economic justice and the ideals of the Gospel? To-day we see groups of Catholic priests and layfolk giving these ideas a local habitation and a name. They are convinced that economics will never save the world without the change of heart that the Gospel requires, and that means living the Christian life and not merely thinking or talking about it. So we see the Jocist Movement cropping up in Belgium and France, the Catholic Worker Groups here and abroad, the Association of Catholic Trade Unionists and the Father Olier Guild in New York, and the Co-operative Organizations fostered by St. Francis Xavier University, Antigonish, Nova Scotia. Each one of these is the visible embodiment of the idea of social and economic justice (a Gospel ideal if there ever was one) and it is the visible embodiment that counts.

How aptly then does St. Paul designate the visible Church as the Body of Christ. Without a body there can be no human life and without the Body of Christ, the organized, visible Church, the spiritual life and ideals of Christ would not be a living force in the world to-day. Only one for whom the life of Christ means nothing can see no particular advantage in belonging to the visible Church.

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CAN THERE BE AN "AMERICAN" FASCISM?

FOR many years, whilst old Europe was struggling with the Social Question, we in America remained aloof from such troubles and considered them as alien to a young, vigorous wealthy nation. Then one day, in the Fall of 1929, there was a crash; the egg of prosperity shattered and out popped the Social Question to fly and nestle in America's lap. It wasn't a mild chicken, either, but a sharp-taloned vulture.

A deep historical process cannot be simplified into a figure of speech, yet it is not unfair to establish the Fall of '29 as the date of America's awakening to the actuality of social problems, of those at least whose solution would imply a social reform. Even among American Catholics, social consciousness, until very recent times, has not been widespread; nothing has existed in our midst like the determined Catholic social movement flourishing in Europe especially during the last quarter of the nineteenth century and gaining greater impetus after the promulgation in 1891 of Leo XIII's Encyclical "On the Reconstruction of Social Order."

We have been, all we Americans, strangely complacent. Things like Socialism were looked upon as products of a foreign ideology and we considered the scattered "reds" in our midst as inconsequential groups of bothersome aliens. We knew the phenomena of unemployment and mass destitution, sometimes very acute during our recurring panics, but we classified them under the head of growing pains. Anyway, the sufferers were mostly recent immigrants, unorganized and seldom vocal. We had the American Federation of Labor and that seemed to fill all our needs.

Things have changed now, as we all know. Pope Pius XI's Encyclical, "In This Fortieth Year," promulgated in 1931, has acted on Catholic thought in America as the one by Pope Leo did in its time in Europe. Owing to that stirring document and to the general circumstances of the country we have been moved to consider the Social Question as one of paramount importance and one which must be solved in the light of Catholic philosophy and by Catholic social action. With typical American impetuosity, once started in the sociological direction we have proceeded at double-quick over various roads without

stopping to elaborate any general and common plan. It has been something like an attempt by a group of players to produce a symphony without waiting for the conductor's baton. Some of the performers have gone on by themselves and naturally some discord has ensued. All Catholic sociologists agree, of course, on fundamental principles—even diplomats do so cheerfully. All take their start from the papal encyclicals, but differences arise when principles are to be applied to concrete situations. Still, out of individual, or group, study and action the main lines of a Catholic social program for America begin to emerge. In time these lines will become definite and universally accepted. Pius XI, of happy memory, recognized the need of concerted action; in his recent Pontifical Letter to the Catholic University on the occasion of its Golden Jubilee he explicitly instructed the University to " evolve a constructive program of social action, fitted in its details to local needs, which will command the admiration and acceptance of all right-thinking men ".

In due time, then, we shall have a positive social program for America on which all Catholics will agree and the present differences and contrasts will be ironed out. Meanwhile we seem to have formed an almost compact front on the negative side. We are all opposed to atheistic Communism and a very large number of our sociologists and of those who talk on sociological lines are putting Fascism next to Communism; in fact Fascism is often bracketed together with Communism as if they were twin evils born through a strange process of political biology from totalitarianism and dictatorship. Or maybe it is the other way about: through a yet stranger process, Fascism and Communism, though apparently unrelated and antagonistic, give birth to the same set of twins: totalitarianism and dictatorship.

I know that some people will say that this is a misrepresentation of the Church's attitude. It is claimed in some quarters that the Church is favorable to Fascism, mainly on account of its attitude toward the Franco, or Nationalist, side in the Spanish conflict. It may be granted that Catholics in general (though there are puzzling exceptions) are favorable to the Franco side, but it is not logical, merely from this admission, to conclude that the Church is favorable to Fascism. Especially in regard to American Catholics, it is very obvious that no consideration

of Fascism enters into the common feeling for Franco and his side; or, it would be better put, for the side on which Franco fights. Catholics are in favor of the Catholic part of Spain. The belated and all too disingenuous Loyalist claims that religion is not opposed in their part of the country are too flimsy.

Incidentally, supposing that this is good reasoning: "Franco has accepted Fascist aid; therefore he is a Fascist and therefore anybody favoring him is a Fascist," we may reverse the argument. It would go like this: The Loyalists have accepted Communist aid; therefore they are Communists and therefore anybody favoring them is a Communist." If pro-Loyalist Americans are not Communists, why should pro-Nationalist Americans be Fascists? In fact, it is much easier to dissociate the Nationalists from Fascism than the Loyalists from Communism. I believe that in time the attitude of a large part of the American public toward the Spanish question will become a matter of regret and of shame; when the documented history of the Loyalist Terror is published—and it will be published—many Americans will wonder how they allowed themselves to be taken in by a clamor for spurious democracy.

This is not the issue in the present article, however. I am sure that my reading of the Catholic press and of Catholic literature in general entitles me to state as a fact that many American Catholics, lay and clerical, subscribe to the principle that the Church is equally opposed to Communism as to Fascism. I may go so far as to say that this appears to be the more common attitude; at least its supporters are more vociferous. I believe this position is wrong, unless considerably qualified.

The stand of the Church against Communism is clear enough and manifestly logical. Even the Communists must realize that. It is easy to modify the outstretched fist into the outstretched hand, but the gesture deceives nobody, at least it deceives no Catholic. Yet, when speaking of Communism, it might be advisable to imitate the Holy Father's caution and make it plain that the Church opposes "atheistic Communism," since there are forms of Communism consonant with Christian ideals. Let us remember the saying of St. Francis and of St. Jerome about "those cold-blooded words 'mine and thine'," and the practice of some early Christian groups. Communism, voluntarily embraced from a religious impulse, deserves the

highest praise; but of course it is admissible only for the few—few are chosen. As a social plan, it is unworkable; even if purified of the Russian anti-God contents it would still remain anti-man; no communistic society can exist except perhaps as a mass of slaves or at a very low level of civilization like that of some of the aboriginal tribes of our Indians who lived in a communism of poverty and dirt.

With all that, I would go slow in reviling Communism with that which seems the supreme denunciation of any theory or of any action: the charge of un-Americanism. For America has been, and is now, the most Communistic country in the world. From Brook Farm to Father Divine's Heaven, communistic experiments have blossomed frequently in this country, some of them enduring for a length of time, especially when started under religious auspices. However, when we speak of Communism without adjectives, atheistic Communism is universally understood, the kind which Russia has allegedly adopted or toward which it is, again allegedly, striving, the kind that our American Stalinists are promoting. Against it the Church is uncompromisingly arrayed, in America and everywhere else. The matter is somewhat otherwise, however, as regards the asserted anti-Fascism on the part of the Church.

I am not saying that the Catholic Church is linked with Fascism, that she is interested in the spread of Fascism, or that she considers it as an ideal social system; but I refuse to accept the alleged equivalence of Fascism and Communism as enemies of the Church. Anybody will admit that the Church seems able to get along with Fascism in Italy, the Fascists' home grounds. There is no need of going into details. Anybody who is familiar with the text of the Lateran Treaty and the correlated Concordat must realize that the Church's rights are safeguarded in Italy in a manner which could hardly be improved upon in a nation ideally Catholic. The Concordat is not merely a " modus vivendi " but a " modus amice vivendi ". Sporadic conflicts have occurred, but not such as to cause more than passing irritation.

Supporters of the theory, " Fascism-equals-Communism " put the discussion on higher grounds. They claim that apart from practical and probably temporary arrangements which the Church may enter into with any sort of government, Catholic

doctrine and Fascist ideology are mutually opposed and must eventually come into open conflict. Now Catholic doctrine is something stable and ascertainable; not so the Fascist doctrine which is yet in a process of rationalization and idealization. The Duce himself has recently said: "Fascism does not wish to die, or worse still, commit suicide, it must now provide itself with a doctrine. Yet this shall not and must not be a robe of Nessus clinging to us for all eternity, for to-morrow is something mysterious and unforeseen." Perhaps, when the Fascist doctrine assumes its final, or at least a consolidated form, it will be found amenable to alignment with Catholic doctrine.

I hear many protesting cries: Fascist doctrine is bad enough right now—totalitarianism, the God-State, citizens' rights at the State's mercy, free speech and political freedom suppressed, muskets in the hands of babies, regimentation. Such cries are violently shouted by advocates of, or sympathizers with, Communism. They come also from many "liberal" Americans who for the moment ignore the fact that Stalinism aggravates all the alleged evils of Fascism and introduces other and blacker evils of its own. Our "liberals" are indeed more outspoken against Fascism than against Communism, though perhaps not because they abhor the former more than the latter, but only because they think the former more imminent. They suppose, perhaps, that Communist propaganda may be used as a sort of antidote to Fascism, an antidote which, after it has done its work, may be easily expelled from the social body. It is somewhat like inducing artificial fever in a patient to treat certain ailments; after the desired results are obtained the artificial fever is eliminated. But it happens that sometimes the patients die before the fever can be subdued.

As I have already observed, a large number of Catholics also join in the outcry. It would be foolish to deny that the charges against Fascism contain elements of truth. Fascists themselves not only admit but are proud of deserving some of these charges. Having established this point, we are now able to place in its proper light the phrase I have objected to when taken in a general sense: "The Church is opposed to Fascism" (though never so diametrically as to Communism). The phrase is correct provided it means: "The Church—in America—is opposed to Fascism—in America". This is the statement of a

fact which does not involve passing judgment on the attitude of the Church in other countries and is apart from the question of ultimate principles; it regards merely our nation's circumstances and our people's mentality. Americans do not need, or at any rate do not want a Duce. Very well, let's not have one. Fascism is militaristic: America is not (at least up to the time this is printed). Fascism is expansionist or imperialist: but we think this country is big enough for our people. Fascism is all-regulatory; we don't want to be over-regulated. Unquestionably, Fascist ideology is not common American ideology; hence the people do not want it, the Church concurring.

All the same I wonder whether the antithesis is so clear-cut, either in the realm of ideas or in the realm of practice. We all see clearly the points of divergence, while the points of contact remain in the shadow. It is claimed, for instance, that Fascism implies a sort of Statolatry, that it has made a god of the State. Surely the supremacy of the State, its transcendental personality, its inclusiveness are matters frequently emphasized in Fascist oratory; but I know plenty of good old American oratory descanting on the "Religion of Patriotism"; I remember sentences like the following: "Next to God, man owes allegiance to the country". There is this much official religion in America that man's duty to God is usually referred to in political speeches; nor does Fascism ignore God; in fact, it has been claimed, in Italy, that "Fascism had given God back to Italy". We do not draw philosophical consequences from what may be simply the bombast of Fourth-of-July oratory; similarly, verbal Fascistic exuberances should be leniently considered as rhetoric rather than put through a rigorous philosophical analysis.

The Fascist State is totalitarian, no question about that. We also in America admit the necessity of that system, but only in case of war. During the World War our government came pretty near being totalitarian, though the appearances of voluntarism were not all destroyed. From all accounts, if another major war involves this country, absolute totalitarianism will be enforced. Bills are being prepared for presentation to Congress, and are likely to pass, that will mobilize all the country's man-power and all physical resources in the dreaded event of war. For all practical purposes no citizen will be a non-combatant; if not at the front, he will be engaged in producing

war supplies. However, we still call war an emergency, a parenthesis in the otherwise smooth running of peaceful society.

The trouble is that Peace is not running very smoothly even in America. All over the world it seems to exhibit the traits of a continuous emergency. If the threat of foreign invasion justifies extraordinary measures and an authoritarian regime, perhaps general economic distress, internal strife developing into a domestic class-war, may be a no less compelling emergency than a foreign war. Pope Pius XI said in his Encyclical "In This Fortieth Year": "Unemployment, particularly if widespread and of long duration, is a dreadful scourge." Perhaps not such a scourge as war; perhaps the most troubled and cruel peace is preferable to the mildest war. I do not think that peace in America has yet created a "state of emergency," but from our experience we can imagine how the same conditions, magnified and hypertrophied in another country, may have brought about there the necessity of totalitarianism.

I believe that the most un-American thing about Fascism is that it has abolished the game of politics and consequently suppressed—or left without an object—political liberty. A democracy without political movements carried out through the people's suffrage is unthinkable, and since we are committed to democracy, for good or for ill, we naturally are not in sympathy with Fascism. Yet, while no one here has attempted to take away from the people the electoral franchise, it looks as if a popular feeling of disgust with politics, especially party politics, is beginning to gather force. Our government, as envisaged by the Constitution, did not intend that party politics should dominate the country; that part of the Constitution was soon set aside. The original idea is now revived in city government, formerly also connected with partisanship. For that matter, we have also the strange phenomenon, in State and even Congressional elections, of candidates running under the label of two or three parties. At the present time there are in America 475 municipalities, large and small, with a city manager form of government. (Judgeships have long been taken out of partisan politics.) In still other cities the old system of Mayor and Aldermen, or Supervisors, is adhered to, but political labels have been abolished.

The trend, at least in municipal government, seems to be away from politics and toward a " business " form of administration, as administration by " experts ". Possibly the trend will in time include higher units of government; but, of course, that would still leave plenty of scope for freedom in the choice among candidates who would be judged on their personal worth and not on party affiliation. Fascism implies a good deal more than the abolition of political parties: yet that abolition would be a step Fascism-ward.

I am not advocating Fascism for America—perish the thought. I am for keeping it out of America—as long as we can. And for that purpose I believe that if there are features in Fascism which may be beneficial to this country and instrumental in forestalling the possibility of totalitarianism, we should adopt them, unafraid of their origin. We sometimes borrow features from Roman or Greek or Byzantine architecture for an American building, but the final structure as a whole is American and suitable for American needs. I have in mind the economic organization set up by Fascism which is perhaps the least distinctively Fascist part of the system. The old Catholic Popular Party, for instance, claimed that Fascism had blithely appropriated several fundamental ideas of its economic program.

It is all too clear that our economic structure, especially in regard to the relations between Capital and Labor—or, more exactly, between employers and employes—is seriously faulty. Employes have found means to defend their rights, better and stabilize their conditions in trade unions, collective bargaining, strikes and some recent legislation. The main problem, however, remains unsolved and surely we do not want to perpetuate a regime of strife, of unbridled individual egoism and of general uncertainty. It is true that Unions prevent the egoism, the narrow vision, the weakness of the individual worker from hurting a class. Unions are themselves " Fasci "! Much as the word may be suspect, it only means a " bundle," a close aggregation of units which, separated, could be easily broken.

But the unions enlarge the egoism of the individual into class-egoism or, at least, they substitute for the narrow vision of the individual the wider one of class-interest, a scope still too narrow and inadequate in respect of the welfare of the nation. In the present set-up there is very little coördination between Unions;

each is concerned with only its own members' immediate interest. Of course we have, at times, sympathetic strikes, not very eagerly embraced, and labor union men will send contributions to striking comrades; a gesture of goodwill which does not imply a comprehensive view of the social problem.

On the other hand, employers are strictly individualistic in their dealing with labor; each plant, or, at least, each corporation by itself. Concerted action may be taken in emergencies, and "gentlemen's agreements" may be entered into. Also, various corporations may pool resources for a special purpose, such as research work or a general advertising campaign, but there is no thought—in fact no method—for coördinating any particular business with the "general welfare" of the country, though in some cases a pale semblance of coördination is obtained by government regulation as, for instance, in transportation rate-fixing. A larger plan was attempted in the early "Brain-Trust" days under the Blue Eagle; that slogan does not survive even in the title of a march.

Instead of an easy criticism of our set-up which is rather a knock-down, let us consider with what equanimity we can muster, the economic organization as enforced by Italian Fascism.

It starts with the Syndicate or occupational union of workers in a given line of production or service; it is a "vertical" union and reasonably so because a man working as a carpenter in, for instance, a sugar refinery is not connected with the carpentry business in general but rather with the sugar business. Matching the employes' association there is an association of employers in the same field. All syndical associations in a given geographical district (a province in Italy) and in a given line of business form, through delegates, a District Union; then the delegates from the various district unions form a National Confederation.

The national confederations, twin organizations of employers and employees, negotiate the collective contracts: they are juridical persons. In case an agreement is not reached, the dispute—if of general import—is deferred to the proper Labor Courts. Disputes concerning local difficulties alleged transgressions and grievances are referred to a freely chosen Arbitration Board, or to the Conciliatory Board, established by the national Civil Code, or finally to the Courts of Appeals sitting as Labor Courts and

composed of three Judges to whom are associated two citizens as " amici curiae ". These citizens are chosen for their expert knowledge of the debated matter. Given such a system, strikes or lock-outs or sabotage are naturally outlawed and the economic life of the country flows on undisturbed.

The final coördination is achieved through the Guilds or Corporations, composed mainly of delegates from the national confederations; each guild unifying the interests of confederations of a similar or allied scope. In Italy twenty-two guilds cover all national activities in production, service or art. As an example, the First or Cereal Guild has the following personnel: Cereal Growers, seven employers and seven workers; Processing industry (milling, rice dressing, edible paste and confectionery industry) three employers and three workers; Baking Industry, one employer, one worker; Commerce (in cereals and their products), two employers and two workers. Besides, one representative of the syndicate of agricultural experts, one representative of coöperative societies, one representative of small industries. The work of the guilds is under the supervision of a cabinet secretary.

As a basis for the activities of the guilds or corporation is a platform of general social legislation. This establishes standards in work conditions: hours of work (with special provisions for women and children), safety and health, minimum wages, invalidity-accident-unemployment insurance, old age pensions, maternity allowance, extra compensation for workers' families with many children, discharge procedure and bonuses for the same. A necessary function of the government in such an economic set-up is also that of price-fixing in order to prevent undue profits and especially to place necessary articles within the reach of the general public.

This is, all too briefly, the Fascist organization in the economic field. It does not seem to infringe upon any rights which we may regard as fundamental if the liberties of the American people are to be maintained. I may quote the words of a very high Fascist authority:

> Corporate economy respects the principle of private property. [Representative Martin Dies denied this in a widely publicized speech in December 1938; he was clearly mistaken.] Private property completes the human personality; it is a right and there-

fore it involves also an obligation. So much so, in fact, that we think it should be viewed as a social function.

Corporate economy also respects private initiative. It is clearly stated in the Labor Charter that the State shall intervene only when individual economy is deficient, insufficient or non-existent. Thus only the State could undertake the vast work of land reclamation.

Corporate economy introduces order in the field of economy. If there is a feature of social life which calls for order and should be directed to a definite purpose, it is precisely the economic feature because it concerns the whole population. It is not only industrial economy that should be disciplined, but also agricultural economy, commerce, banking and the arts and crafts.

Apart then from such features of Fascism as may be repugnant to American mentality and inapplicable in our social milieu, we may consider the economic set-up adopted by Fascism as a pattern for our country. Of course, the pattern should be considerably modified, especially in view of our Federal system. America is a nation but not a State, and Federal Authority is still limited, even though our forty-eight "sovereign" commonwealths are losing steadily the attributes of sovereignty. Any social organization to be applied in America must be somehow Americanized, which is in accordance with the old scholastic principle: "Whatever is received, is received according to the mode of the recipient." And surely, even if we were to establish some sort of a corporate state, we would not all call it Fascism. We may call it National Unionism, or the Newer Deal, or the American Plan, or what you please. It is essential to find an attractive name.

I am not able, right now, to propose any such name. Nevertheless I believe—though I express my belief with much hesitation, knowing that many of my betters cannot see that Americans have anything to learn from foreign countries—that the set-up of the corporate state shows a way out of our wholly unnecessary social confusion and widespread misery.

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CIVIL LAWS AND CONSCIENCE.

AN OLD question that seems to be taking on new interest is the question of the binding force of civil laws in conscience. Recently there appeared two articles of serious thought and value: articles that touch a vital point for moralists and confessors, especially in the matter of justice and rights.

I.

The first article appeared in the *Periodica*.[1] Father Lopez, S.J., would defend the thesis that civil laws bind in conscience: he would frown upon the old theory of the purely penal law. Each law would carry with it a moral obligation, a binding force under pain of a moral fault; there would be no law that would be satisfied by the citizen simply by his compliance with its demands or his subjection to its penalty in case of condemnation for the violation of the statute. This attitude of moral obligation attached to every law is adopted because of modern conditions in the legal field.

In the first place, even though we admit the proposition that the moral obligation of a law may be attached or detached from the law at the will of the legislator (and most modern theologians work on that principle), to-day we have no means of ascertaining the will of the legislator so as to know whether he wishes to bind in conscience or not. In Europe there is no mention of the moral phase of civil law by the legislator nor by those learned in the law. The civil legalists abstain from entering the sphere of conscience. The legislator then is non-committal. In fact he passes the point over in silence. Since the legislator is not occupied with this obligation, the other criteria advanced for determining whether a law is penal or strictly moral are quite in vain: they can indicate nothing since the will of the legislator gives no heed to the issue.

If such then is the will of the legislator, Father Lopez would forsake such uncertain and shifting grounds of morality and take as his norm, sound Thomistic, Catholic, Papal pronouncements. Pope Leo XIII, in his Encyclical on Human Liberty, says: "Moreover the highest duty is to respect authority and obediently to submit to just law." Father Lopez would have us hear

[1] *Periodica de re morali, canonica,* etc., Romae, 1938, fasc. IV, 203-216.

the words of St. Paul (Romans 13:1-7) strongly impressing upon the early Christians obedience even to the pagan emperor of that time.

Thus far, the discussion has been of a rather speculative nature. In order to determine the extent of such a wide obligation more precisely and concretely, we would have to measure it in its repercussions on the common good and in relation to the necessities of the common good.[2] The fundamental notion of a law postulates a binding force because the law is viewed as necessary for the common weal of society. If that necessity be not too apparent or pressing, the obligation of the law would be proportionately weakened; if it were hardly present, the obligation would be not too serious. There are conditions that bring about the lessening of that inherent moral obligation of the law—for example, when burdens are imposed by the law and there is a possibility of an injustice therein; or when the law would promote the common good and in so doing enters into conflict with a clearly defined natural right on the part of the individual; or when the law prevents the attainment of a legitimate and somewhat necessary individual good; or when the law imposes a private detriment which must be officially overlooked because of the exigencies of the common good or because of the utter impossibility of bringing about a remedy without opening the way to abuses or harm to society. In all these cases the inherent moral obligation is susceptible of change. I believe that this is an adequate and exact summary and commentary of the opinion of Father Lopez. The same thoughts have been expressed by another Jesuit theologian in Belgium.[3]

The doctrine thus expounded seems to be worthy of our hearty approbation. In these days of rapid social changes and enhanced solidarity among citizens, we should protect the civil law with some sanction in conscience. Moreover, in moral theology we would be sadly lacking in certitude on many questions were we without the aid of the civil law: thus, we are on firm ground in Justice and Rights, especially in Contracts, if we agree that civil laws bind in conscience. Then, too, a moral obligation theory is more in keeping with the peace and tranquillity and the aims of the State. If we keep this obligation

[2] *Periodica*, p. 216.

[3] Cf. *La Nouvelle Revue Théologique*, Louvain, 1938, 1072-1074: an article by Father Brisbois, S.J.

within reasonable limits and subject to the above acknowledged limitations, nobody can condemn us as being unduly pragmatic or harsh or over formalistic.

II.

In adopting this doctrine we are not swerving too far from what has been traditional doctrine amongst us in America. We have been traditional followers of the penal law theory in most cases. Our moral theologians have favored the penal law theory most generally and even to-day the European moralists will always cautiously intimate, for example in regard to taxation, that what they say is not surely applicable to English-speaking countries, since these likely hold fast to the penal law obligations.[4] We are considered as accepting lightly the obligation of civil laws in conscience. How did we get that reputation? Is it something characteristic of ourselves and our law? Should we not use our particular note of liberty even in the moral obligation theory?

It is interesting to open the books of those prominent in the legal profession: especially the books edited by outstanding scholars and leaders in our law schools. Therefrom come reflexions that show the genesis of our predilection for the purely penal theory. According to Dean Pound there has been woven into the American and English law a group of influences which has imbued our legal thought and attitude.[5] We have a peculiar concept of the state and the ruler; we have been influenced by the spirit of Puritan individualism; we have received a certain tendency from the Reformers; our modern philosophers contribute something to our prevalent notion and attitude toward the state and law and our historic origin has had its share in giving us a characteristic outlook on law. These five influences give to the Anglo-Saxon mind a rather rugged independence toward the civil law and do not foster the moral obligation theory. Let us work out that statement in a practical way.

First, our concept and attitude toward the State is a sort of feudal relationship between the ruler and the people.[6] The

[4] Merkelbach, *Summa Theologiae Moralis*, Paris, 1935, II, 658. Marc-Gesterman, *Institutiones Morales*, Paris, 1933, I, 636.

[5] Pound, *The Spirit of the Common Law*, N. Y., 1921, pp. 1-96.

[6] Pound, Roscoe, *The Spirit*, cited, 16-33. Pound, Roscoe, *An Interpretation of Legal History*, N. Y., 1923, 3.

famous Magna Charta was not so much the declaration of the rights of the people as it was the solemn declaration that the king had strict duties to his subjects: such duties as evolved out of a jural relationship of the governed with the governor. The latter was looked upon as the servant, a superior charged with the welfare of his people; he had obligations to those under his care: his obligations rather than our duties were stressed. The aspect and tone of inferiority and servile submission were greatly diminished and there was a parity of relationship that makes for freedom and liberty on the part of the governed. Under such a relationship the people have much more to say in the direction and control of society.

This concept is of prime importance in determining the nature and the obligations emanating from the will of the legislator. The subjects feel that they have something to say about the law: the law is a reflexion of their needs and desires as a nation. That sense of something due from the ruler will lead the individual to favor himself, to be lenient rather than strict in his own obligation to the law. Did not the older theologians sense that when they recommended consulting the " timorati " as to the nature of the obligation coming from a law? The first step then inclines us a little to the penal law philosophy. How different our attitude would have been, had we considered first our obligations to the authorities and only secondarily their obligations to us! We would then have been more favorable to the moral obligation theory of laws.

Dean Pound goes on to note the traces of Puritan individualism in our legal attitude.[7] " We may say, at least, that Puritanism of itself and possibly because of the deeper-seated causes of which it was a manifestation, has been a significant factor in molding the spirit of our common law." [8] The element brought to American legal thought through Puritan influence was ultra individualism: " It was perhaps Puritanism which gave that added emphasis to individualist ideas in the formative period of our American legal thought, that served to stamp them upon our theory and our practice and kept them alive and active in the United States a half century after English legal thought

[7] Pound, Roscoe, *The Spirit*, cited, 34-44. Obering, William F., *The Philosophy of Law of James Wilson*, Washington, 96.

[8] *Ibid.*, p. 36.

had turned over a new leaf." [9] The Puritan was a rigid sort of person and a staunch embodiment of all that was personal and individual. He proudly fought to keep his own rights of conscience free from interference by the public authorities. This characteristic of rugged individualism the Puritan carried over into his attitude toward law and toward the government. True, he was glad to belong to an organized form of government: this he did of his own free-will. He looked upon his membership as an agreement for the promotion of the common good. That agreement was a strictly-drawn affair from which no one, much less the legislator, was to depart. A strict, immutable code was asked whereby all was to be judged. Jealous of his rights and liberties, the Puritan yielded only to well-founded postulates of the government, particularly in their moral aspects. " It is hardly too much to say that the Puritan ideal state was a permanent deadlock where the individual, instructed by a multitude of rules but not coerced, had free play for the dictates of his own reason and conscience. Our legislation exhibits an inconsistency that is part of the Puritan character. He rebelled against control of his will by state or magistrate, yet he loved to lay down rules, since he realized the intrinsic sinfulness of human nature." [10] Unwittingly then, perhaps we bear within us (and the law, a product, or rather a by-product of us, shows it) the imprint of Puritan legalism and our legal system is tinged therewith: individualism, a conscience free from legal bond and coercion, jealous guardians of personal liberty. This " ultra-individualism and an uncompromising insistence upon individual interests and individual property as the focal point of jurisdiction " would certainly be more satisfied in discounting the moral import of the law; perhaps we should say, in leaving the moral import to the individual to settle; and thus the penal law theory would be the only one for us to adopt, as being the easier for us to follow. Certainly in the penal law theory the individual is more favored, more free, " more personal."

A word or two upon another influence in our legal system would not be amiss. We have just pointed out that we have a peculiar attitude toward the law: an attitude of strict and rigid

[9] *Ibid.*, p. 37.
[10] *Ibid.*, p. 55-56.

individualism that has come down to us from our ancestry. These tendencies were accentuated in our legal system by the Reformers and the Reformation.[11] Both contributed their share to the weaving of English legal thought. Personal aggrandizement was a trend in the Reformer and his movement. The motto of both was to extend individual freedom and the presumption was not always in favor of the ruler but rather of the subjects. It is said that the Reformer was a man of passive obedience to the state and even though the Anabaptists (hostile to the state and rebellious) were condemned by Luther, we must not imagine that all other participants of the Reformation were active, enthusiastic servants of the king. Philosophers of that period hold that the Reformers favored the state and authority not out of pure altruism or political concept but for one purpose, namely to achieve individual freedom in all things. John Wycliffe is recognized as the first reformer in English legal thought as well as in religious thought. His appeal and determination to abandon the Roman Corpus Juris and the Papal legislation was but a means to the furthering of the independence of the individual as against and at the expense of authority. He set the customs of the people as the fruitful source of law even to a greater extent than the expressed and determined will of the legislator. His *De Officio Regis* contains only the theory of this goal to be attained.[12] Whether great or small there is a bit of individualism involved and it is not difficult to admit the possibility of our having inherited the spirit, for the Reformation had a legal twist and trend in more ways than one.

This concept of individualism in our legal system is furthered by the philosophies of those who are so ardently admired by our modern law schools.[13] St. Thomas's theory of laws and their binding force is known but hardly followed by them. Kant and Hegel are perhaps the most revered: almost any choice amongst the books on the philosophy of law will bear out that assertion.[14] Both of these philosophers envisage law as an expression of liberty on the part of the governed: law is a warranty

[11] *Ibid.*, p. 45 sq. Obering, *op. cit.*, 96 sq.

[12] Pound, Roscoe, *The Spirit*, cited, p. 39-40.

[13] Pound, *An Introduction to the Philosophy of Law*, New Haven, 1922, 84-89. Holland, *Jurisprudence*, Oxford, 1924, 79-81. LeBuffe-Hayes, *Jurisprudence*, N. Y., 70. Pound, *The Spirit*, cited, 149-153.

[14] Kocaurek, Albert, *An Introduction to the Science of Law*, Boston, 1930, 127.

against undue interference from fellow-citizens. Kant defines it as " a totality of the conditions under which the free will of one man can be united with the free will of another in accordance with the general law of reason." Hegel would have law as a like free-doing, " to let men do freely everything they may consistently do with a like free-doing by their fellow men." In like manner Locke says: " Law in its true notion is not so much the limitation as the direction of a free and intelligent agent to his proper interest and prescribes no further than is necessary for the general good of those under the law . . . so that the end of law is but to preserve or enlarge freedom." Savigny of the Historical School in the development of law sees nothing else but the preservation of the freedom of the will from undue interference as the end and purpose of law.

Law then is an expression of personal freedom, a guarantee of freedom. Its obligatory nature is not so much insisted upon and its social nature, its inherent purpose—namely, furtherance of the common good—is not too much in view. Evidently, the personal, individual element is stressed by such authors and one need not be surprised that such theories should make us more prone to weigh well our personal freedom before capitulating, especially when the law would hinder us. This attitude is not too congenial to a strict moral obligation.

Accepting the four points which have been already stressed and which concerned our attitude, our philosophy on law and our attitude toward the authority of the state, there still remains a reason why we feel so free toward the law and more inclined to discount its moral obligation. The reason is to be found in the origin of the doctrine that lies behind the participation of the people in the government. This origin gives rise to a paradox, a sort of conflict in theory but not in fact, since in practice we are of the most orthodox and law-abiding. This paradox and conflict however opens up another avenue to our fondness for the penal law theory.

The paradox is of historical origin.[15] The vindication of the rights of the people as against the sovereign was perhaps first issued by Parliament Leader Coke on 10 November, 1612, when he informed James I (who had considered himself absolute and

[15] Pound, Roscoe, *The Spirit*, cited, p. 78.

above the law) that the king was to rule under the law and God. It had been treason to assert that formerly, but from the year 1612 it was regarded as sound doctrine. The limitation of the royal prerogatives had already been expounded by the Spanish jural-theologians, who maintained that the natural law was binding both on citizens and rulers. Grotius (1625) acclaimed the rights of the people, but only in virtue of right reason: he went no further. Both he and the Spanish theologians agreed that no matter how man had acquired them, these rights were merely recognized by positive law and by no means created, conceded by the law. Thus a juridical foundation was laid for the inalienable rights of the governed. It was argued that the latter possessed certain rights, notwithstanding all positive human laws. This indeed was a novelty in the legal world.

The sequel to this was that the voice of the governed, the legislature, became the center of gravity in society. This was true in the seventeenth century.[16] In the following century, the age of the American Revolution and the French Revolution, the people, the popular sovereignty was set up as the authoritative voice in the state.[17] The people did not regard themselves as the ultimate source of authority: they recognized a higher authority, a supreme being, as the source of the legal order and they considered themselves as His delegates. Moreover, the people realized that they had, in turn, to delegate their power to representatives who would rule freely for the common good. Now this faculty of delegating to others will be the cause of conflict in legal thought and action. The people realized that they could, that they must delegate, but they were most cautious and jealous in doing so. They meant to safeguard their God-given rights, first, by asserting them, and secondly, by creating definite limits within which their delegates, the presiding officers of the state, were to act. These two acts are well illustrated in the Declaration of Independence and in our Constitution—that is, the limits within which the constituted authority acts.[18] The delegating was done cautiously: the people lingered with mindful eye upon their entrancing vocation as God's depositary. We have then an electorate that knows

[16] *Ibid.*, p. 79.
[17] *Ibid.*, p. 100.
[18] *Ibid.*, p. 98.

and believes itself as the immediate source of all power in the state, but an electorate also that recognizes its inability to use that power and hence must of necessity and in due manner delegate it, more or less fully, to the individuals who are chosen and who will rule freely and independently. In delegating, the electorate safeguards itself by thrusting the expression of its rights into a Constitution that is destined to check its (the people's) representatives: a Constitution that is destined to serve notice that the people are to be considered in the government of the state, particularly when obligations are to be imposed, when rights are being limited.

Significative of the foregoing is the Tenth Amendment to the Constitution: "The powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively or to the people." Does that not bear witness to our theory? Well might the Dies Committee on Un-American Activities define Americanism as: "Americanism is the recognition of the truth that the inherent and fundamental rights of man are derived from God and not from government, societies, dictators, kings or majorities . . . Americanism means the recognition of God-given rights under the Constitution through the instrumentality of an independent Congress, an untrammelled judiciary, and a fair and impartial executive operating under the American system of checks and balances." This quotation from the *Hartford Times,* 3 January, 1939 sums up well what we have been saying.

Granted that we have a strange philosophical set-up as regards attitudes toward law, it is pointed out that there is a practical repercussion of this in fact.[19] The repercussion is simply stated: the electorate would believe itself as the source of law because its representatives made the positive law; the law is enforced because the electorate wishes it; the law is subject to the general will of the electorate (excepting the fundamental God-given rights) and to the limitations desired by it. On the other hand, the law-makers would honestly believe themselves independent of the electorate and would hold that law is found, not made: it is but a logical deduction of higher principles; they would think that law is enforced because, after all, society needs it

[19] *Ibid.*, p. 99-101.

for the common good; law to them is sacred and subject to little limitations, save such as may be deduced from the higher source that runs behind all constitutions. Mark the paradox, the contradiction, the conflict.

All this is very interesting. It brings out a plausible explanation of our traditional preference for the penal law theory. One can readily see how and why our legal system is strongly in favor of inclining much toward the people and why the people exact so much from the law in the line of personal privilege and indult. It was that attitude by which the Puritan and the Reformer lived. Our modern philosophers enjoy the same distinction and the historical background of the framing of our Constitution certainly makes much of the inalienable rights and the dignity of the human person. The Government then is made for the people and the people expect its paternal guidance and its magnanimity. The people expect much from the law and they will concede things to the law, but only in their interest and cautiously for fear the Government usurp too much of their personal liberty. This attitude was most conducive to the purely penal law theory in the matter of obligation emanating from the law: to surrender part of one's goods or liberties, except in emergencies, was preferably postponed until demanded, *post sententiam*.[20]

III.

Should we break with that spirit and join the current in favor of the teaching that civil laws bind in conscience? It would seem that the best theologians are heartily in favor of doing so; and even the civil law philosophers amongst us hope for a more juridical attitude in the people. It would seem that social conditions ask for the change, along with other adjustments which the doctrine of solidarity within a nation has brought home to us, especially during the economic depression. The postulates of social justice certainly presume a moral obligation on our part to coöperate with the legislator in the pursuit of the common good. The Pope's social program would be impossible of attainment without a better acceptance of the civil law as binding in conscience. All in all, if we must strive in unison for the common good and if the custodian of the tem-

[20] *Ibid.*, p. 109.

poral common good be the legislator, and if the latter speaks through laws, should we not obey him, even to the extent of seeing him as the representative of God? Shall we become so rigid as to be reproached with formalism? Faithful to the past and to our historical background, the moralist and the confessor will have a delicate task to perform, a task that, in harmony with the principles set forth in the first part of this article, will save the sanctity of the law and promote the common good and reconcile both with the personal good of his penitent. Thus the moralist and the confessor will be the custodian, each in his own sphere, of both the common good and the individual good. Moral theology will then be faithful to its purpose in thus directing man to do good and avoid evil as commanded by the natural and positive laws, which, after all, are the manifestations of the Divine Will.

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MARRIAGE AND VENEREAL INFECTION.

IT IS a mistake to confound the present movement for the control of venereal disease with the attitude of European governments on the marriage question or the laws that have been enacted in this country against the sterilization of the unfit. Nor can " materialistic philosophy " be said to be the " basis of this recent legislation "[1] demanding a certificate of freedom from venereal infection before the issuing of a marriage license.

There is much to be said for the point of view that recent legislation, requiring a certificate of freedom from venereal infection before obtaining a marriage license, merely gives expression to the natural law which demands that one should not assume serious obligations unless he is reasonably capable of living up to their demands. One should not jump at the conclusion that the state is imposing diriment impediments to matrimony by its recent legislation prohibiting the marriage of a person infected with a venereal disease, until it is evident that the state will treat as invalid marriages contracted in spite of its legislation or will merely punish the offenders.

To obtain some light on this point, I asked Mr. Joseph P. Tumulty, Jr., to look into the general question whether or not marriages without a license render the marriage null and void, and received the following note:

> It is the general rule with regard to the construction of statutes requiring the obtaining of a license to marry, that such statutes are directory only, and do not destroy the validity of a marriage contracted without a license, unless the statute expressly provides that such a marriage shall be void.
>
> That the above is the general rule is stated in 38 Corpus Juris, Section 73, at pages 1306-7.
>
> This rule was applied in the following cases, in which it was held that the requirement of a license is directory only, and does not have the effect of invalidating a marriage contracted in disregard of the requirement:
>
> *Sawyer v. Slack,*
> 196 N. C. 697, 146 SE 864;
> *Simms v. Simms,*
> 122 Miss. 745, 85 So. 73;

[1] See Francis J. Connell, " May the State Forbid Marriage Because of a Social Disease," ECCLESIASTICAL REVIEW, 1938, 99, 507.

Martin v. Otis,
233 Mass. 491, 124 NE 294;
Feehley v. Feehley,
129 Md. 565, 99 Atl. 663;
Davidson v. Ream,
161 N. Y. S. 73;
Grigsby v. Reib,
105 Tex. 597, 153 SW 1124;
Becker v. Becker,
153 Wisc. 226, 140 NW 1082;
Reifschneider v. Reifschneider,
241 Ill. 92, 89 NE 255.

In some jurisdictions, however, license requirements have been construed as mandatory for the creation of a valid marriage. It was so held in the following cases:

Collins v. Hoag,
121 Neb. 716, 238 NW 351;
Halsey v. Ho Ah Keen,
295 Fed. 636 (Hawaii);
Smith v. North Memphis Savings Bank,
115 Tenn. 12, 89 SW 392;
Offield v. Davis,
100 Va. 250, 40 SE 910.

The recent legislation in various states requiring a physician's certificate of freedom from venereal infection before issuing a marriage license cannot be looked upon as laying down a diriment impediment to matrimony, unless it is expressly stipulated that marriages without this certificate and without a license are null and void.

An article by Bascom Johnson discusses the type of laws that should be passed and says:

> Such laws should contain a penal clause making it a misdemeanor for any of the officials or individuals referred to in the law to fail to perform the duties therein imposed upon them or to disobey any of the provisions of the law.[2]

This concept of the laws advocated does not envisage a diriment impediment.

[2] "Premarital and Prenatal Examination Laws," *J. of Social Hygiene*, 1938, 24, 480.

One might well ask whether or not it is wise to start campaigning about the rights of the Church in this particular juncture. Apparently some states require a marriage license at the present time for the validity of the marriage, and the Church has no difficulty in going ahead with its own marriage legislation while Catholics submit to the laws of the state.

Is it really true that one's personal liberty is infringed, if the state prohibits him from knowingly and willingly marrying a person in the acute phase of a venereal infection?

It is with a person's right to enter into such a marriage that the present article is concerned.

Let us take a possible case. John wants to marry Mary, but acquires a gonorrhoeal infection. While his condition is still acute, he lays the whole matter before Mary and argues thus:

If " all the physical afflictions that can ensue from the marriage of a diseased person, both to the healthy consort and to the offspring, are an immeasurably lesser evil than one mortal sin which the marriage could avert," [3] you should marry me at once, for my concupiscence is so great that I am unable to refrain from mortal sin even for a day.

But it is certainly true that the physical consequences of gonorrhoea are a lesser evil than a single mortal sin.

Therefore, you should marry me at once without waiting even a day for the treatment of this condition which my sinful folly has brought about.

Can Mary consent? Must she not say, I might consent *if* I could do so without any sin myself; for one sin cannot be committed to avoid another.

What must Mary consider before she gives her consent?

Marital intercourse with a man having acute gonorrhoea is going to infect the woman who submits to it.

This infection is not merely a disagreeable illness; but is also a disease often followed by serious consequences. Once the infection starts in a woman there is no telling just where it is going to stop. It may ascend, for instance, to the Fallopian tubes and cause Mary to be sterile so that she can never bear children.[4] It may go further, though it will rarely do so, and

[3] Rev. Francis J. Connell, *l. c.*

[4] The majority of sterile women owe their sterility to a gonorrhoeal infection. About 90 per cent of sterile women are married to one who at some time or other

lead to peritonitis and death. It may infect the eyes of her child and it will be blind for life, etc.

Has Mary any duty to take reasonable care of her own body, and choose a partner in marriage who is not infected or insist that John wait until adequate treatment has rendered him non-infectious?

That all human beings have a duty to take proper care of their body is a general principle of Catholic moral theology.

> Mutilation of oneself is prohibited by the same law by which suicide is prohibited.
>
> For, since a man is not lord over his own person, he should maintain it intact and he is bound to preserve it along with its members in a sound condition capable of performing all those functions for which the Author of nature endowed man as man with organs and faculties.[5]

Mary is bound by this law. Certainly no woman is bound to marry at once a man with acute gonorrhoea in order to save him from a single mortal sin. Father Connell's argument, if taken at its face value, would bind any woman to such a marriage, for if she could prevent a mortal sin, the physical consequences to herself are as nothing to the spiritual good of her neighbor.

Nor is it likely that John's marriage will terminate his mortal sins, if his concupiscence is so great he will certainly commit a series of mortal sins if his marriage does not take place at once.

Considering the welfare of the human family and the permanence of the marriage tie, Mary cannot enter upon any such precipitate marriage without herself being guilty of sin.

Now let us look at the matter from the point of view of John. Can he in conscience ask Mary to marry him at once?

Let us consider the following passage from St. Thomas on the nature of marriage: "The formal nature of marriage consists in a certain indissoluble union of minds in virtue of which each spouse is bound to maintain an inviolable faith to the other.

had gonorrhoea. See Charles Mazer and Jacob Hoffman, "Female Sterility: An Analysis of 500 Cases from the Department of Gynecology at Mount Sinai Hospital of Philadelphia," *Med J. and Rec.*, New York, 1929, 129, 90. The principal cause of sterility in the male is bilateral gonorrhoeal epididymitis. Cf. F. R. Hagner, "Sterility in the Male," *Surg., Gynec. and Obst.*, Chicago, 1931, 52, 330.

[5] A. Lehmkuhl, *Theologia Moralis*, 11th ed., Freiburg, 1910, I, § 734, p. 404.

The end of matrimony is the generation and education of the offspring." [6]

Let us first consider John's request in the light of the formal nature of matrimony. This perfect union of minds is the perfection of friendship governed by the law of charity. Can John be a perfect friend to Mary and fulfil his obligation of charity to his prospective wife, if he says: Marry me at once and let me infect you with gonorrhoea that I may still my violent concupiscence? Instead of charity, this request sinfully disregards the formal nature of marriage and offends against charity by selfishness.

Let us now consider John's request in the light of the end of matrimony. Matrimony is a contract which a man and a woman enter upon for the sake of begetting and educating children. If John at the present moment runs the risk of rendering his wife sterile and his children blind, he is not in a position to make the marriage contract. If a man knew he was incapable of building a bridge, he would sin if he contracted to do so.

It would seem then that John is making a sinful request: He sins against charity by asking an innocent girl to marry him and be infected with gonorrhoea in order to still his own concupiscence. He sins also because he is entering upon a contract while in a condition in which he may defeat the very end of the contract by which he is binding himself.

Now all this must be considered in the light of the fact that if Mary tells John, " Just wait a little while, take treatment and then we will marry," and they do wait and marry at a seasonable time, John will be cured and Mary will not be infected.

How long must John wait?

" A properly treated gonococcal infection should become noncommunicable in a few weeks or two or three months at most." [7]

Considering all that we have just presented, I doubt that anyone would feel that he could in conscience tell an innocent girl to marry a man with an acute gonococcal infection at once and without waiting for treatment, on the problematical ground of saving him from falling into mortal sin. If she did so, she would suffer the consequences of infection and in all probability

[6] III, xxix, 2, corpus.

[7] N. A. Nelson in *Proceedings of Conference on Venereal Disease Control*, Washington, D. C., Dec. 28-30, 1936. Supplement No. 3, 116.

merely change the man's field of moral conflict from one sphere to another.

Certainly waiting for some time is an imperative necessity.

But now let us suppose that instead of gonorrhoea John has the more serious disease: syphilis.

In the first place the consequences to Mary if she marries John during the untreated primary stage of syphilis are much more serious: mental disease, heart disease, gummata leading to degeneration in any organ or part of the body. Furthermore, the children of a syphilitic mother are themselves syphilitic and often die in the womb or soon after birth.

If Mary has a duty to protect herself and her children from gonorrhoea, she has a more serious duty to protect herself and her children from syphilis.

If John sins by asking Mary to marry him while he has an acute gonorrhoea, he certainly sins if he asks her to marry him at once, after he has told her he is in the primary stage of syphilis.

Furthermore, just as gonorrhoea can be rendered non-infectious, so can syphilis. If one must postpoone marriage in the former case, should it not be postponed in the latter even though one must wait somewhat longer?

If John has syphilis, how long before he can marry Mary with impunity? At the present time good medical authority requires first of all 70 weeks of vigorous and continuous anti-syphilitic treatment followed by a year of probation. If at the end of this year there is no evidence of the disease, especially in the nervous system and cardio-vascular apparatus, the patient " may be regarded as probably ' cured ' and, if he desires, allowed to marry." [8]

Though acute gonorrhoea and primary syphilis can ordinarily be cured so that there will be no relapse, this happy result does not always follow. Relapses occur so frequently that the person who has once been infected should in all fairness inform his proposed partner in matrimony, even though he has had thorough and supposedly adequate treatment. But at the present time, after vigorous and continuous treatment for 70 weeks and a further period of observation for a year or a year

[8] Joseph Earl Moore, *Management of Syphilis in General Practice.* Supplement No. A to Venereal Disease Information, Washington, 1938, 55.

and a half in which no recrudescence of the infection appeared, one could be fairly certain of marrying and having a healthy progeny.

Does the longer waiting time, in spite of the more serious consequences, justify a precipitate marriage as a "remedy of concupiscence?"

One should consider that any marriage based on concupiscence is likely to lead to various mortal sins and final separation and not attain its end of preventing mortal sin.

Furthermore, various circumstances justifiably delay marriages for a longer time than the 122 weeks demanded for the treatment and observation of primary syphilis.

Finally, the fairly certain hope of a normal healthy offspring is of fundamental importance in imposing the necessary delay.

It may be true that if the syphilitic child could choose, he might prefer to be born syphilitic rather than not born at all; [9] but it is certainly true that if the parents can choose between bearing healthy or syphilitic children, they have a duty to take measures to give birth to healthy children.

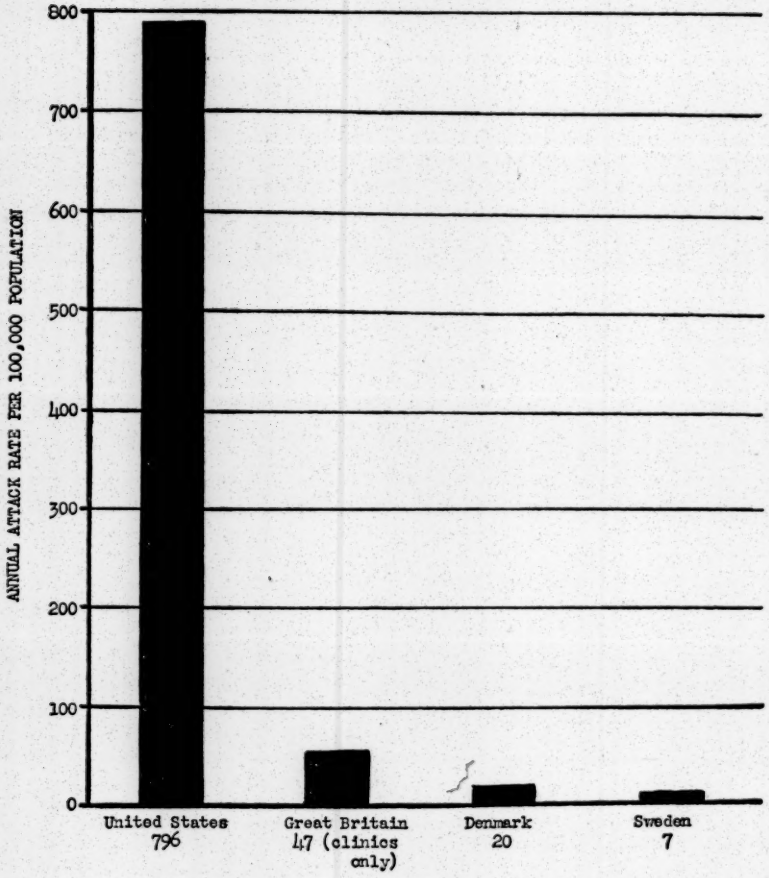
What now is to be said of the laws being enacted in various states demanding evidence of freedom from venereal disease before issuing a marriage license?

What is the end and purpose of this legislation? It is certainly not conceived of by the legislators as an attack upon the Catholic concept of marriage or an attempt to usurp the Church's function of laying down diriment impediments.

The fact is that the incidence of syphilis in the United States is far in excess of what it might be. In Great Britain and Scandinavia early and adequate treatment is provided by the state for persons with syphilis. The comparative incidence of syphilis in these countries is shown in the accompanying diagram. A movement is on foot, sponsored by Surgeon General Parran, to provide equal facilities in the United States. The laws demanding examination for venereal disease by a physician before an applicant is granted a marriage license are designed to detect cases of latent syphilis and prevent an innocent party being imposed on by an unscrupulous partner. The number

[9] Cf. Connell, *l. c.*, 515.

INCIDENCE OF SYPHILIS IN UNITED STATES, GREAT BRITAIN, DENMARK, and SWEDEN IN 1935



of cases is vanishingly small who will think that their liberty is trampled on because they are not allowed to marry at once a person in the infectious stage of a venereal disease. That many persons have syphilis and do not know it is witnessed by the fact that " at least half of the patients with latent syphilis not only had no previous treatment but no knowledge of their infection ".[10]

[10] *Proceedings of Conference on Venereal Disease Control Work*, Washington, D. C., Dec. 28-30, 1936. Supplement No. 3, 126.

It is truly unfortunate that any Catholic priest would rise up against this most wholesome movement for the welfare of these United States; and see in the State's attempt to control venereal disease an attack on the Church's prerogatives and the " fundamental right " of a person to marry a syphilitic partner if he wants to. If understood in its true light, the work of Surgeon General Parran merits the warm support of the Catholic clergy and laity throughout our land.

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Reply.

1. Dom Moore began his comments on my article by proving that in most States the laws forbidding marriage to persons suffering from a venereal disease are merely prohibitive, while in a few States they are intended as nullifying statutes. I fail to see the purpose of this argumentation. Certainly, I never claimed that the laws in question are regarded as nullifying prescriptions in all the States. On the contrary, I wrote: " More than half the States of the Union have already passed such laws. Some of these laws merely forbid the marriage of a diseased person; others declare the marriage of such a one null and void, at least when he has not informed the other party of his condition " (ECCLESIASTICAL REVIEW, December, 1938, p. 507). Then I cited Dr. Alford's *Jus Comparatum*, in which this subject is discussed most thoroughly. But as far as my contention is concerned—that the state may not prohibit baptized persons from marrying because of venereal diseases—it makes not the slightest difference whether the civil authorities intend to make the presence of a disease a merely prohibitive or an invalidating condition, since in either case the state is trespassing on the jurisdiction of the Church. In the words of Canon Law: " It belongs *exclusively* to the same supreme authority (of the Church) to establish other impediments, *either prohibitive or diriment*, for baptized persons, etc." (Canon 1038, § 2).

2. Dom Moore says: " One might well ask whether or not it is wise to start campaigning about the rights of the Church in this particular juncture ". I for one am firmly convinced that it is wise to campaign for the rights of the Church, especially at the present day. The more we soft-pedal the Church's rights,

the harder it is going to be to maintain them in future. Our late Holy Father, Pius XI, gave this counsel to Catholic writers: "Let them not, under pretext of avoiding offence to their adversaries, minimize or dissimulate the true Catholic doctrine" (*Acta Ap. Sedis*, 1923, p. 61).

3. Dom Moore claims that it is against the natural law for a person suffering from a venereal disease in an acute stage to marry. From his argument it would follow logically that it is also against the natural law for married persons to have intercourse when one of them is in a similar condition. Now, for centuries Catholic theologians have been teaching that marriage and the use of marriage are not prohibited by the divine law when one party is afflicted with a venereal disease, provided the other party is informed of the presence of the disease and there is a proportionately justifying cause for the marriage or its use, such as the avoidance of incontinence. And the Catholic Church in all its detailed matrimonial legislation has never said anything to the contrary, but has permitted the commonly accepted doctrine of the theologians to be freely taught. If Dom Moore is correct the Catholic Church seems to have failed in its duty as the divinely established interpreter and guardian of God's law, by allowing for centuries something to be proposed to its members as licit which in reality is immoral.

4. Even if it were against the natural law for a person suffering from a social disease to contract marriage, only the Church, not the state, would have the right to make an authoritative pronouncement to that effect. For the Code asserts: "It belongs *only* to the supreme authority of the Church to declare authoritatively when the divine law impedes or invalidates marriage" (Canon 1038, § 1).

5. Dom Moore says: "Father Connell's argument, if taken at its face value, would bind any woman to such a marriage, for if she could prevent a mortal sin, the physical consequences to herself are as nothing to the spiritual good of her neighbor". Such an inference fails to take into consideration the well-known axiom: *Caritas non obligat cum gravi incommodo.* The only conclusion that can be drawn from my argument according to Catholic principles is that a woman, while not *obliged* to marry in such circumstances, is *permitted* to do so. Thus, Sabetti-Barrett, S.J., concludes: "When a social disease is made known

to both parties (of an engaged couple) they are not *obliged* to marry, although they *may* do so if they wish—the Church does not forbid them " (*Compendium Theol. Mor.*, 842, § 6).

6. Dom Moore quotes Lehmkuhl to the effect that a person is not allowed to mutilate himself or to injure his health. Now, the learned Jesuit is there speaking of the case of a person who would *directly* and *positively* cause harm to his bodily integrity or well-being. Like every other Catholic moralist he teaches that one may *allow* physical harm to befall him for a proportionately grave reason. Thus, this same Lehmkuhl, whom Dom Moore quotes against me, says: " When, on account of disease or similar circumstances, grave harm or danger follows from the use of marriage—though not the danger of imminent death—there must be a grave cause to justify conjugal intercourse, such as is, especially in a long enduring ailment of one's partner, the grave danger of incontinence " (*Theol. Mor.*, Vol. II, n. 1083).

7. Dom Moore says: " If John (the diseased person) at the present moment runs the risk of rendering his wife sterile and his children blind, he is not in a position to make the marriage contract. If a man knew he was incapable of building a bridge, he would sin if he contracted to do so." Do these words mean that the marriage of such diseased person is *invalid* by the natural law? Such a doctrine is diametrically opposed to the teachings of Catholic theologians and the practice of the Catholic Church.

8. Dom Moore says: " One should consider that any marriage based on concupiscence is likely to lead to various mortal sins and final separation ". This might be true of a marriage based *merely* on concupiscence. But, as every priest engaged in the active ministry knows, and as all Catholic moralists teach, the alleviation of passion is a potent and lawful end of marriage, which often provides a good reason why an engaged couple should not delay too long in getting married, even though their love is truly spiritual and sincere, giving hope of a permanent and happy marriage. Furthermore, the Catholic Church recognizes this fact and explicitly states that the *remedium concupiscentiae* is one of the secondary ends of marriage (Canon 1013, § 1).

9. Dom Moore says: " What is the end and purpose of this legislation? It is certainly not conceived of by the legislators as an attack upon the Catholic concept of marriage or an attempt

to usurp the Church's function of laying down diriment impediments." Why does Dom Moore limit the function of the Church to the establishment of *diriment* impediments, and make no mention of the Church's exclusive right to make *prohibitive* impediments also for the baptized? Moreover, even though legislators have no *subjective* hostility to the Church, is that any reason why we should abstain from opposing legislation that is *objectively* opposed to the Church's rights?

10. Dom Moore says: "It is truly unfortunate that any Catholic priest would rise up against this most wholesome movement for the welfare of these United States". I certainly am not opposed to the efforts of our civil authorities to stamp out venereal diseases. In the opening paragraph of my article I wrote: "An extensive campaign against venereal diseases is being conducted in the United States. . . . Undoubtedly a movement of this nature is urgently demanded. . . . All Catholics should coöperate in every lawful manner toward exterminating, or at least diminishing, these dire ailments". What I object to is one particular feature of this campaign—the civil prohibition of marriage to the afflicted—because this is an encroachment on the rights of the Catholic Church.

11. Dom Moore must logically hold that not only those afflicted with a venereal disease but also those suffering from any ailment that is liable to endanger seriously the health of a conjugal partner or of future offspring should be forbidden to marry. Accordingly, I fear he has aligned himself with those of whom our late Holy Father, Pius XI, wrote in his celebrated Encyclical *Casti Connubii*: "There are some who, over-solicitous for the cause of eugenics, not only give salutary counsel for more certainly procuring the strength and health of the future child—which indeed is not contrary to right reason—but put eugenics before aims of a higher order, and by public authority wish to prevent from marrying all those who, even though naturally fit for marriage, they consider, according to the norms and conjectures of their investigations, would through hereditary transmission bring forth defective offspring. . . . Those who act in this way are at fault in losing sight of the fact that the family is more sacred than the state, and that men are begotten, not for the earth and for time, but for heaven and eternity".

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Analecta

ACTA PII PP. XII.

First Paternal Word of His Holiness, Pope Pius XII, Addressed to the Whole World, from the Sistine Chapel, over Vatican City Radio, on the Day after His Election as Bishop of Rome, in behalf of Peace for All.

While the most profound emotion pervades Our soul and We feel bewildered before the tremendous responsibility to which Divine Providence, in its inscrutable designs, has wished to call Us, we feel the need to reach all with Our thought, Our own first paternal word.

Above all, and with particular affection, We offer Our paternal embrace to Our beloved Cardinals, whose piety, virtues and eminent gifts of soul We have known from long experience.

Then We greet with special benevolence Our venerable brothers of the Episcopate. At the same time We bless the priests, religious and nuns; those who work in the Missions for the diffusion of the Kingdom of Christ; those who in Catholic Action, under the guidance of their Bishops, collaborate in the hierarchical apostolate, and, finally, all Our children scattered everywhere throughout the world, especially those who suffer in poverty or in pain.

May the copious, beneficent and choicest blessings of Heaven descend upon each and every one.

But in this solemn moment Our thought runs also to all those outside the Church to whom it will be pleasing to know that the Pope raises for them to God his best and greatest prayer and wishes for every good.

To this Our paternal message We will add a hope and invitation to peace. We speak of that peace which Our predecessor of blessed memory urged so insistently upon men, for whom he invoked such ardent prayers, and for which he made to God a spontaneous offer of his life. We speak of that peace which is the sublime gift of Heaven, the desire of all good souls, and the fruit of charity and justice.

We invite all to the peace of a tranquil conscience in friendship with God, to the peace of families united and harmonized by much love of Christ, and, finally, to a peace between nations through fraternal help, reciprocal and loving collaboration, and cordial understanding for the superior interests of the great human family under the eyes and protection of Divine Providence.

In these fearsome and trying hours, while so many difficulties seem to oppose the attainment of that peace which is the most profound aspiration of all hearts, We raise to Our Lord a special prayer for all those who are entrusted with the highest honors and the heaviest burden of guiding their peoples in ways of prosperity and progress.

Here, beloved Cardinals, venerable brethren, and beloved children, is the first wish overflowing from the palpitating fatherliness with which God has enkindled Our heart.

Before Us is the vision of the enormous evils afflicting the world, for the correction of which may Our Blessed Lord send help to Us, unarmed but confident. With St. Paul, We repeat: "Capite Nos." We are sure that you Our children, Our brothers, will not render this Our wish in vain. After the Grace of God, it is in your good will that Our soul so greatly trusts.

May Christ our Lord, of whose fulness We have all received, make fruitful this Our wish, making it a messenger of holy consolation for all the world, and give efficacy to the blessing which, in the name of God, We now impart with all Our heart.

PIUS PP. XII.

SACRA PAENITENTIARIA APOSTOLICA.

(Officium De Indulgentiis)

DECRETUM: INDULGENTIA PLENARIA " TOTIES QUOTIES " DIE II MENSIS NOVEMBRIS VEL DIE DOMINICA SUBSEQUENTI LUCRIFIERI POTEST.

Summus Pontifex Pius X, per Decretum S. Congregationis S. Officii die xxv mensis Iunii a. MDCCCCXIV datum,[1] omnibus christifidelibus, qui quamlibet ecclesiam aut quodlibet publicum oratorium (vel semipublicum pro legitime utentibus) die secunda mensis Novembris pie visitavissent, plenariam indulgentiam " toties quoties " suetis conditionibus lucrandam concessit, fidelibus defunctis solummodo applicandam.

At identidem, decursu temporis, ad hoc Sacrum Tribunal supplicationes pervenerunt, quibus postulabatur ut eadem indulgentia die quoque dominica subsequenti lucrifieri posset; idque et consilio ut ii etiam pretiosissima hac concessione frui possent, qui die Commemorationis omnium fidelium defunctorum id non peregerint. Quam ad rem Ssmus D. N. Pius divina Providentia Pp. XI, in audientia die X mensis Decembris a. MDCCCCXXXVIII infra scripto Cardinali Paenitentiario Maiori concessa, statuere ac decernere dignatus est plenariam eiusmodi indulgentiam vel die ii mensis Novembris, vel subsequenti die dominica lucrifieri posse, firmis manentibus ceteris conditionibus tum memorati Decreti S. Congregationis S. Officii, tum Decreti S. Paenitentiariae quoad plenariam indulgentiam " toties quoties " lucrandam.[2]

Praesenti in perpetuum valituro absque ulla Apostolicarum Litterarum in forma brevi expeditione et contrariis quibuslibet non obstantibus.

Datum Romae, ex Aedibus S. Paenitentiariae Apostolicae, die 2 Ianuarii 1939.

L. CARD. LAURI, *Paenitentiarius Maior.*

L. * S.

S. LUZIO, *Regens.*

[1] *Acta Ap. Sedis*, vol. VI, a. 1914, p. 378.

[2] *Acta Ap. Sedis*, vol XXII, a. 1930, p. 363.

Studies and Conferences

Questions, the discussion of which is for the information of the general reader of the Department of Studies and Conferences, are answered in the order in which they reach us. The Editor cannot engage to reply to inquiries by private letter.

PRAYING THE MASS.

That we must " pray the Mass " is an expression heard on all sides. Just what particular method is to be used to pray the Mass, is still a matter of controversy. Some interpret the phrase to mean saying the actual liturgical prayers of the Mass; others claim it satisfies just to use prayers which make for attention; others interpret the suggestion to mean using substitute prayers which bring out the parts of the Mass and the ends of sacrifice.

It is the fond dream of every zealous priest to provide such a method as will make for an intelligent assistance at this continuation of Calvary. But, practically speaking, what is the best method to achieve this purpose? Are the liturgical prayers of the Mass best suited to make for intelligent assistance by the laity or can a better method he provided?

What do the liturgical prayers of the Mass not tell the laity? They do not explain those very features which the laity should understand; some of these are wholly obscured and others appear but dimly. The three principal parts of the Mass are not clearly designated. How many laymen could discover from the liturgical prayers where the Offertory ends and when the period of Consecration begins or where the Communion begins? It is not even clear that there are three principal parts to the Mass. The four ends of sacrifice do indeed receive glorious attention through the liturgical prayers, but hardly in the orderly manner in which they were studied at school; then they are so hemmed in by beauty and still more beauty that " we cannot see the wood for the trees ". It is not entirely clear that Christ is the High Priest making the oblation to God the Father. There is quite a controversy about the essence of the Mass, but the liturgical prayers do not clearly bring out any concept of sacrifice.

To those using the daily missal it would seem to be an enlightening occupation to find the proper Epistle and Gospel for every day. One priest brushed aside that hope with the remark, " There is no different Epistle and Gospel because we sing a black Mass on most days of the year ". Let us suppose that we did say or sing the Mass of the day. To the average layman, the epistles more often than not are just pious writings in a style different from every other composition. When many of them are not understood immediately even by priests, we can say that scores are lost upon the layman. What shall the layman deduce from the Epistles of the great theologian, St. Paul? What does " Abba, Father " mean to him? The same is true, though in less degree, of the Gospels. They do conduce to pious sentiment and the story makes for edification, but the deeper meaning is a matter of study and not of cursory reading. These are devout readings for the laity, but scarcely ever texts which build up his knowledge.

Layman can see that the liturgy of word and the rubrics conduce to the order and adornment of divine worship; they can see less distinctly that the ceremonies are the outcome of interior emotion, are expressions of religious thought and sentiments; they fail more at understanding their symbolical signification; they are lost when faced with the higher and mystical sense.

We have said that much is lost upon the average layman. Can even the most intelligent layman understand what is understandable in the Mass? Our humble opinion is that there is no such layman. The reason for this statement follows in the next paragraph.

The prayers of the Mass are so lofty in aspiration, so magnificent in rhetorical turn, so pregnant with deep meaning, so sublime in devotion that even the priest grasps their meaning only at intervals and in part. I scarcely think that I am idealistic or sentimental in saying that their meaning can fall upon him only when he stands in the glowing nimbus of the altar, only when God supplies him with an extra devotion that is almost a " lumen gloriae ". Let us take human nature as it is and not as it ought to be. Isn't it the experience of all priests that they frequently go through the Mass without any pious reaction whatsoever, without that desirable grasp? Watch a group of priests attending a Mass said by another. If the sacred

significance is so easy to comprehend, why do they not use their little missal at such times instead of catching up with their Office? The answer is, They are not in the nimbus. It is this writer's humble opinion again, that the Mass can be grasped only after hundreds of hours of meditation and deeply only in the moments when God specially enlightens. The Mass prayers are the " Yahweh " of the Old Testament that the high priest could utter only once a year when he entered the Holy of Holies and then only after a fitting preparation. The priest today must be fittingly prepared by meditation and piety and then a few times in the year may he utter " Yahweh ". Let us take some examples. We will pass over the fact that many of the terms are archaic and many phrases have that peculiar scriptural diction which is unfamiliar to the laity. But, can even a priest after a thousand meditations fathom those four words, " Te igitur clementissime Pater "? When it is fathomed, isn't his soul already in the enjoyment of the beatific vision? Only he with annointed hands can surmise the meaning of the phrase, " in sanctas ac venerabiles manus suas ". Only one who himself offers, intelligently reads, " sicuti accepta habere dignatus es munera pueri tui justi Abel ". The priest alone recognizes the High Priest in the phrase " per ipsum et cum ipso et in ipso ". Then the words of consecration are for the consecrator who is not struck dead when he dares to say " corpus *meum* " and " sanguinis *mei* ". Instances could be multiplied by the score, so holy that only a priest in his holier moments can even touch mentally. These are a few of the phrases about which books have been written and which have supplied subjects of meditation for billions of hours, and still their depth has not been plumbed. How can the layman, whose reading must be hasty, then understand the meaning as he runs along? The liturgical prayers are the song that only one hundred forty-four thousand priests can sing and no one else can understand.

The Church understands the difficulty. No wonder that she urges the celebrant to prepare by a half-hour's meditation; no wonder she provides special psalms to be read in the sacristy just before the celebration; no wonder she gives over the first part of the Mass itself to a preparation of sorrow and faith; no wonder that this preparation in the Mass itself takes up more time than the principal parts that follow! Even a priest, more

often than not, does not understand and many a morning he will conclude his meditation on the Mass with a sentiment akin to Joyce Kilmer's when he wrote:

> Poems are made by fools like me
> But only God can make a tree.

The liturgical prayers are a language apart. If God wrote the Pentateuch using Moses as an instrument, He wrote the Mass prayers using no man as an instrument. Outside of the words of Christ Himself in the Gospel, the Bible contains nothing so sublime, so sacrosanct.

But there is a strong movement to introduce the use of the missal to the laity? In very many instances the impetus was supplied by our Catholic publishers who want to sell more and more Catholic books as long as no authoritative voice will " say them, nay ". No one can blame the publishers because they are minding their business; when authority directs otherwise they will obediently rearrange their business. The writer has put questions in places where the recitative method was followed to learn only that it devoutly occupied the attendants at Mass but the questions about intelligent participation still remained unanswered. One, of course, had to agree that the recitation was better than no method at all and better too than many methods which just substitute pious prayers for the liturgical prayers. But the Mass is more than a pious devotion—it is meaningful liturgy; the Mass is more than pious occupation—it is a joint offering of a sacrifice.

For want of a better method the layman frequently attends Mass by reciting communion prayers throughout. Is there propriety in a method which disregards the greater thing, the Mass itself? May I tell a story? Last summer a distinguished and devout Catholic layman engaged me in the following conversation. " Father," he said, " I can't understand it any more; I'm puzzled; I'm lost. Our Catholics rush into the Church in droves to receive Holy Communion and they rush out in droves before the last prayer of the Mass is finished. The priests begin distributing Holy Communion after the Gospel and all through the Mass I see only jostling, hurrying droves. Is there a Mass there? Do these stampeding throngs realize that there is a Mass there? Which is the more important on Sunday, devout attendance at Mass or Holy Communion that gives no thought

to the Mass? " No, the Church never errs, but we priests individually can err when we unbalance liturgy. Isn't the Mass itself devoutly attended the proper preparation for Holy Communion? Wasn't it the original intention that all attending the Mass were as a climax of personal devotion to be united with the High Priest through Holy Communion? Communion is not by any means the greatest part of the holy function; in consonance with the practice in the Old Law, it is eating of the sacrifice after the sacrifice has been offered. If the Church had meant the Mass to be only a communion service, she would have given us prayers different from her liturgy of to-day. But, the Mass is the sacrifice that may not be overshadowed even by the reception of the Most Holy Eucharist. The Mass is a divine function; the reception of the body of Christ, only a human one.

The Mass should be our first devotion, before all other devotions and before even a communion service. The layman evidently does not get enough from the regular Mass prayers and so he goes to substitutes. There is a place in the economy of the Church for every devotion, be it only to the thread from a saint's garment. But, the Church is an orderly city which has one high tower, the Mass, and many lesser towers, the devotions. Something has been unbalanced by the individual priest when greater crowds go voluntarily to the small buildings rather than to the one big building in this city of God. The laity are the sheep that heed the voice and sometimes in these cases they are the victims of harangue; sometimes they expect to derive a comfort from these devotions which they think they cannot get from the Mass. No, " man does not live on bread alone," but the diet of the Christian is unbalanced when he eschews bread entirely or almost so.

Why do our people manifest such inattention during Mass? The answer might be that they do not know how to focus their attention. Watch your congregation at any Sunday Mass and you will come back with a heavy heart. About ten per cent use a prayer book. The other ninety per cent lean comfortably against the seat behind them and just stare vacantly; many add one fervent prayer, " I hope to heaven it doesn't last too long ". They remind us of the yokel who sat on a fence whistling. " What do you do all day? " he was asked. " Sometimes I sit and think," he replied; " other times I just sit."

If attendance at our Sunday Mass were not obligatory, would ten per cent attend? It satisfies our complacency to compare Catholic attendance with the Protestant on a Sunday—you can give the answer which should not be the answer.

Regardless of theological controversy about the " Mysterium fidei " there are certain points about, and parts of the Mass which the Catholic layman should follow and which he can follow. Actually, there are not so many mysteries at all. He should know what are the three principal parts, where each begins and each ends; how the liturgy of the Mass expresses these and carries them out; how he himself can intelligently accompany these actions at the altar. He should know to whom the sacrifice is offered and by whom and how. He should have a fundamental idea of the concept of sacrifice; all theories understand that oblation of some kind is necessary though they differ on what is offered; give him then the simple idea that Christ the Son offers Himself to the Father. He should know that the Mass is not a new and distinct sacrifice but a continuation of the sacrifice of the cross as many words go to make one prayer. He should know what are the four ends of sacrifice, how the Mass carries them out and how he can offer the Mass for these purposes. This is not at all deep theology and one or two sermons can easily prepare the way for a method which brings out these salient points.

Could a method be devised which closely resembles the rosary and which might therefore become just as popular? St. Dominic conferred one of the greatest blessings upon the laity when he popularized the rosary. It can be used anywhere at any time as no other devotion. The rosary can be used by the ignorant and the wise, by the child and the man, by the robust and the dying. Could we devise a Mass rosary with five decades corresponding to the Mass of the catechumens, the Offertory, the Consecration, the preparation for Communion, and the thanksgiving after Communion? But what prayers shall we say on the beads? The Pater Noster would fit, but a substitute would have to be found for the Hail Mary. There the dream ends for we would have to go into the cell of the saint and into high halls to find one who could with right compose a substitute for the " Ave ".

The solution would seem to be participation, and a very active one at that. May I tell another story? There was a little Catholic boy, a rather precocious boy, who found it very difficult and boresome to kneel silently during the Mass. One day he got a thought (remember, he was precocious): "Uh," he said to himself and with considerable rebellion, "the priest has it easy. He can talk and he can move around up there. I'm going to be a priest." We must take human nature as it is, must recognize the fact that the average Mass congregation is lazy. The posture of the attendants, the paucity of prayer books, prove that we have something to worry about. The congregation may not "move around up there" but we must let them talk, that is, provide congregational prayers for them. The layman can be provided with a formula of prayers which definitely point out the three principal parts and which briefly explain each. Coming to the Consecration he will be informed about the four ends of sacrifice and shown how he can offer the Mass for these purposes. True, there are congregational prayers on the market; and granted too that I have not read all of them. But judging from those that I have seen, it is my humble opinion that they are not sufficiently indicative of the parts and purposes of the Mass as a sacrifice. With some it is all reading and little or no exchange between reader and people. With others the reader's prayers are too long. When even prayers said by a priest at the altar are to a great extent lost upon the congregation, what chance has a layman droning lengthy orisons? In devising a plan for congregational prayers we must remember the reason for the popularity of the litanies—there is such a rapid exchange between reader and people that the latter have no chance to become disinterestd. Now any attempt at providing prayers different from the liturgical ones is an anti-climax; as one canonist said, "Only a saint should try it." Any writer who is not a saint—and there are many such—can do only the next best thing: he can search the scriptures and the lists of approved prayers and use what is suitable text. If also he uses the language of the Mass liturgy wherever the phrases are sufficiently clear, he is employing holy language for a thrice-holy work, and furthermore he brings his text more in consonance with that which it attempts to clarify.

This method is not un-Catholic as regards the Mass because it has been followed for years in the Greek Uniate rite. Arrange the prayers in a form of versicles and responses, or dialogue, if that is the right word. Appoint a couple of leaders, preferably men, who lead the interchange of prayers; the masculine voice fits a Catholic church better than the female voice. It is even advisable to appoint two to lead the responses because the congregation, for a while at least, will be a little timid, may not respond in time. To procure intelligent attention the versicles, at least the principal ones, should be timed with the part they explain or elaborate. There will therefore be several pauses but these will do no harm since they give the attendants a moment to reflect on what is going on. Do we not take up too much time with set prayers and too little for reflexion?

For example, the priest is at the Offertory. Perhaps you will agree that the Offertory is a series of prayers by which the celebrant asks God to cleanse and sanctify whatever is to be used in the holy sacrifice and whoever are to gain fruit from it. The reader will at the appropriate time announce that the celebrant holds the bread before God, or the wine, that He may cleanse and sanctify it. The congregation immediately answers, " Cleanse the bread, O God, and make it holy."—Again, the priest is in the middle of the real sacrifice after the consecration of the bread and wine. The reader announces each purpose of sacrifice. Say he announces the first, " We adore God the Father by offering Him the gift of His Son ". The congregation answers, " Through Him and with Him and in Him, we adore ". The exchanges must be as rapid as is consonant with the dignity of the holy function; they must be truly significant of the liturgical meaning of each part; they must conform as much as possible with the actual phrases of the Mass.

Years ago a distinguished convert wrote a book *Back to Holy Church;* we await eagerly an inspiring book from some holy writer—" Back to Holy Mass ". Years ago the saintly Pius X recalled a beautiful phrase, " restaurare omnia in Christo." Does not Christ loom largest in the Holy Mass? Liturgy and theology have given the saints their due, they have brought back frequent Communion, they have explained the doctrine of the Mystical Body. Only in the temple the faithful stand idle; they are silent when they might join in the chorus of the hun-

dred and forty-four thousand; they let Him offer alone who comes down to make oblation with them. Our faithful have become a " hither-and-thither body " because not understanding they ask confusedly, " To whom shall we go? " The faithful need to learn more of the Saint of Saints, of the sacrifice of which they eat, of the greatest function of the Head of the Mystical Body. The faithful need to get back to Holy Mass.

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HOW EXPRESS MUST PERMISSION TO ASSIST AT MARRIAGE BE?

Qu. Bertha, a Catholic, goes from her home parish to another city to marry John, an unbaptized non-Catholic. She carries with her the necessary dispensation obtained for her by her pastor, as also his personal letter to the pastor of St. John's requesting him to perform the ceremony. The pastor of St. John's is busy and has as a house guest a country pastor, whom he asks to marry the couple. Is the marriage valid? It has been asserted that it is invalid for the following reason: Canon 1096 decrees that " permission to assist at marriage must be granted to a specified priest for a specified marriage." The law does not permit any one to presume what may be the intention of the person delegating. The intention must be expressed in words or writing.

Resp. If—as the context of this question implies—the " country pastor " assisted at Bertha's marriage in St. John's parish, the challenge of its validity is difficult to understand. Apparently the reason alleged is that the pastor of St. John's merely asked his guest to assist at the marriage; that he did not put into explicit words orally or in writing that he, the pastor of St. John's, gave his visitor *permission to assist* within the limits of his parish at the marriage *of Bertha and John.*[1]

[1] It is stated that this is " apparently " the reason; for the latter part of the inquiry might refer to the pastor's failure (?) to designate the individual marriage or the individual priest. A request formulated in some such manner as: " Will you please marry the couple in the parlor? " certainly identifies a " specified " priest (" you ") and a " specified " marriage (" the couple in the parlor "). The quoted translation from canon 1096 omits the word " expressly ". Nevertheless it appears that the challenge of the validity of the marriage centers around this point and this reply is restricted to it.

Editor's Note.—Our reader's attention is called to the necessity of being specific in their inquiries. Otherwise their queries may entail the necessity of numerous distinctions and extended treatment of all. And even then it may happen that the particular phase of a question which the inquirer had in mind is passed over.

Authors are wont to distinguish delegation as (1) *presumed* or *interpretative,* if a priest is convinced that the pastor or local ordinary would grant him leave to assist; this was universally considered invalid, as not fulfilling the requirements of the Tridentine decree *Tametsi.*[2] (2) *Tacit,* if the pastor is aware that a certain priest will assist at a marriage and does not object: the pastor's silence would be supposed to be equivalent to delegation. Even under the Tridentine legislation it was not certainly sufficient.[3] (3) *Express,* if delegation is manifested in writing, by word or by signs.[4]

Our inquirer seems to conclude that the pastor of St. John's gave express delegation to his guest, whereas his opponent seems to deny it. The latter, it seems, would insist that the pastor could delegate only by the use of such phrases as "I delegate you," "I authorize you," "I give you permission," to assist at the marriage in question. It is beyond doubt desirable that such phrases be employed. But is it necessary for valid delegation? In the present case, does not the request of the pastor of St. John's imply his delegation of the visiting priest?

Neither in canon 1096 nor in any other canon does the Code give a definition of the word *expresse* that would here exclude the use of any other phrases than such as are mentioned above. On the contrary, authors assert that "delegation is expressly given . . . (c) by evident signs, such as a nod of the head".[5]

[2] P. Gasparri, *De Matrimonio* (3 ed., Paris, 1904), n. 1133.

[3] *Ibid.,* n. 1134.

[4] J. J. Carberry, *The Juridical Form of Marriage,* The Catholic University of America, Canon Law Studies, no. 84 (Washington, 1934), p. 83; L. Wouters, *De Forma Promissionis et Celebrationis Matrimonii* (5 ed., Bussum: Paul Brand, 1916), p. 24.

[5] Carberry, *op. cit.,* p. 83. "*Ex parte delegantis* requiritur actus: *a) vere positus . . . b) voluntarius . . . c) expressus,* sive oretenus sive in scriptis sive aliis signis positivis aequivalentibus."—Wouters, *op. cit.,* pp. 23-24. Cf. J. Garcia F. Bayon, *Tractatus Canonico-Moralis de Sacramento Matrimonii* (Madrid: Editorial del C. de Maria), II, n. 278; F. Schönsteiner, *Grundriss des kirchlichen Eherechts* (Vienna: Lugwig, Auer, 1937), pp. 704-705; A. Knecht, *Handbuch des katholischen Eherechts* (Freiburg i. B.: Herder, 1938), p. 631; Wernz-Vidal, *Ius Canonicum,* tom. V: *Ius Matrimoniale* (Rome: Universitas Gregoriana, 1925), n. 538, II, 5°; F. M. Cappello, *De Sacramentis,* vol. III: *De Matrimonio* (3 ed., Turin: Marietti, 1933), n. 675, I, *c;* J. Linneborn, *Grundriss des Eherechts* (4-5 ed., Paderborn: F. Schöningh, 1933), pp. 356-357. Gasparri is not explicit, but would undoubtedly admit the same; for similarly as in his third edition, n. 1136, in his latest edition (*De Matrimonio* [ed. nova, Vatican City: Typis Polyglottis Vaticanis, 1932], n. 955), he asserts: "At delegatio oretenus data valet quia Codex de modo eamdem concedendi nihil statuit; et si quodlibet proximum cavillationum periculum absit, est etiam per se licita."

The question then resolves itself into this: Does a pastor's request that a certain individual priest assist at a specified marriage within his parish confer upon the latter the necessary delegation in a sufficiently *express* manner? There does not seem to be any reason to doubt it; for it must be evident both to the pastor and to the other priest that, while making the request, he also implicitly but nevertheless expressly grants the necessary delegation. Such an implicit delegation differs from tacit delegation.[6] In the tacit delegation the delegator maintains silence in every regard as far as delegation is concerned and does not in any manner reveal his mind. In implicit delegation on the other hand the delegator does manifest his mind and intention, not indeed by such a direct statement as immediately and literally denotes delegation; but nevertheless in a positive statement that equivalently and unmistakeably conveys his intention to authorize the other priest to assist at the marriage.

Therefore De Smet in the latest edition of his treatise on marriage asserts: " Delegatio expresse data non est confundenda cum delegatione explicitis verbis concessa: id sane non exigitur ac sufficit ut concessio positivo actu facta quoquo modo, etiam signo, innotescat. Expressa delegatio opponitur praesumptae seu interpretativae, vel etiam tacitae; explicita opponitur implicitae ".[7] And in a footnote to the above he adds: " Igitur quod requiratur delegatio *expressa,* ideo non excluditur, sub poena nullitatis, delegatio *implicita;* excludi autem videtur *mere tacita,* sic scil. intellecta ut nullo actu positivo nitatur, sed sola contradictionis, absentia, attentis quibusdam adjunctis, puta si parochus videat assistere sacerdotem quem novit incompetentem et taceat." [8]

[6] It is easy to confuse " implicit " with " tacit " and " express " with " explicit ". In reality " explicit " and " implicit " are rather subdivisions of " express ". That which is directly and immediately stated is explicit; that which is " implied " or contained in an expression is implicit. But that which is tacit is not express, it is in no way manifested.

[7] A. De Smet, *De Sponsalibus et Matrimonio* (4 ed., Bruges: Charles Beyaert, 1927), n. 117. These words gain all the more weight by the fact that the author added them as well as the footnote (to be quoted immediately) to what he had stated in his third edition of 1920. Cf. also Knecht, *op. cit.*, p. 631, footnote 1.

[8] There is no gainsaying that implicit delegation should be avoided, since it can easily be carried too far and give rise to grave doubts. But this danger does not alter the fact that, if delegation is unequivocally contained in an external manifestation made by the delegator, the delegation will be undoubtedly valid. If the implied delegation is not so certain, one must not be content with it before the celebration of the marriage; after the marriage ceremony it will frequently be impossible to remove all doubt and therefore the marriage will be presumed valid.

It cannot be justly asserted that, if one would act upon such implicit delegation, he must " presume what may be the intention of the person delegating ". Delegation is merely " presumed," if the one delegating has in no wise manifested any intention to delegate: to " presume " merely presupposes that the former would grant delegation and accepts this as sufficient.[9] But one who has been delegated implicitly does not merely surmise what is in the mind of the pastor: on the contrary, he perceives that the pastor has said or done something which equivalently manifests his intention and thereby conveys to him the necessary authorization.

In the case under discussion the pastor of St. John's knew full well that his guest did not enjoy any authority to assist validly at the marriage between Bertha and John within the limits of St. John's parish, unless he as pastor delegated him. His request was undoubtedly meant to confer upon his guest the necessary power to assist validly. Otherwise both his request and his guest's acquiescence would have been futile. Therefore it follows that by his request the pastor of St. John's granted the visiting priest the necessary permission to assist validly at the marriage in question and that under this aspect its validity is beyond just attack.

STIPEND FOR HIGH MASS SUNG BY ASSISTANT.

Qu. Apropos of the stipend for a High Mass sung by an assistant, mention perhaps should be made of the pertinent diocesan rules.

In this diocese long years ago I was told that one dollar out of the usual five dollar offering for a High Mass went to the support of the choir, two dollars to the assistant who celebrated the Mass and two dollars to the pastor.

As regards the pastor's retaining part of the stipend for a High Mass I have a vague recollection of hearing that it was because the parish is in a sense a benefice, and that the use of the church, vestments, choir, etc., justified the retention of a share of the five dollars.

[9] Cf. e. g., how Gasparri defines it. " . . . delegatio . . . triplex concipi potest: 1° *Interpretativa,* quam nonnulli AA. *praesumptam* dicunt, si nempe sacerdos persuasum habet parochum aut Ordinarium hanc licentiam certe concessuros fuisse et ideo matrimonio assistit. Patet hanc delegationem nullius valoris esse." *Op. cit.* (1932 ed.), n. 954. That in n. 956 he refers to an implicit delegation in connexion with a certain appointment with full parochial jurisdiction does not necessarily limit implicit delegation to this case. See also G. Payen, *De Matrimonio,* (Zi-ka-wei: Typographia (T'ou-sè-wè, 1929), II, n. 1178, 1) 2° a); Linneborn, *op. cit.,* p. 356; Wernz-Vidal, *op. cit.,* n. 538, II, 5ª; Bayon, *op. cit.,* n. 278; Carberry, *op. cit.,* p. 84.

Then, too, surely some provision must be made for deacon, subdeacon, organist, singers, sacristans, servers, heat, light, wear and tear, and the rest.

Resp. Before the several points covered in this question submitted by different readers are taken up, it is well to recall what was written at the head of an earlier conference in the January number, 1938, page 70:

> (a) In certain dioceses the usual stipend for Masses is increased when the Mass is said or sung in connexion with certain functions which are reserved to the pastor, e. g., weddings, funerals. Here the increase over the usual stipend is intended by the ordinary not so much as a stipend for the Mass as rather a stole fee. Therefore that part of the " stipend " manifestly accrues to the pastor, even though another priest celebrates the Mass.
>
> (b) In some dioceses it was customary for the pastor to retain a percentage of the stipends for Masses which his assistant had celebrated, as part of the expenses for the latter's board. In the few cases that are known to have been submitted to the Holy See, it is declared that this custom may be tolerated, but the answers to some of these doubts expressly urge the local ordinary to provide some other means for the support of the assistants.
>
> In dioceses where centenary or immemorial custom of this sort exists, and if in the judgment of the ordinary the custom cannot be prudently abolished, it may be tolerated. If however the custom is not centenary or immemorial, it cannot be tolerated, for canon 5 is definitely against it. Where there is no such custom, it ought not to be permitted to arise, and no pastor is justified in starting it.
>
> (c) Abstracting from any such extrinsic legitimate title, a pastor has absolutely no claim to any part of a stipend for a Mass offered up by any other priest in the parish church, and the assistant is not bound to turn over any part of a stipend for a Mass which he celebrates.

Diocesan rules that run counter to the canons are invalid and in this matter would not confer upon a pastor a just title to any share in the stipend for a Mass, whether a High Mass or a low Mass, celebrated by the assistant. Only a papal indult, such as has been granted to certain dioceses because of special circumstances, would justify a departure from the common law of the Church. And no ordinary would establish a diocesan rule that is in opposition to the rules laid down by the Church.

It is outside of our province to appraise the validity of a particular diocesan regulation. But it strikes one as exceedingly strange that the existence of such a diocesan rule is asserted merely because it was heard of long years ago. If it were a diocesan statute or the like, it could readily be verified. If the statement means that a custom to that effect existed, the custom would have no force, except in the circumstances mentioned in canon 5. If the custom is not centenary and immemorial, it must be considered suppressed. If it is centenary and immemorial, canon 5 permits the ordinary to tolerate it, provided that in his prudent judgment it cannot prudently be abolished.[1]

Since the promulgation of the Code the parishes in this country are undoubtedly benefices.[2] So far as we are aware, this is the first time that this is assigned as a reason why in this country the pastor may participate in the stipend of a Mass celebrated by another priest. We cannot recall that any author sets up such a claim in favor of a beneficiary; and there is nothing in the nature of a parochial benefice to support such a right.

Perhaps our inquirer has in mind certain papal documents—which, however, declare just the reverse of what he suggests. If a beneficiary himself celebrates Mass to fulfil the obligation of his benefice, he can be obliged to pay a tax for the use of the church's utensils. But this tax cannot be exacted for manual stipends.[3]

It may be that our correspondent refers to a declaration of the Congregation of the Council of 26 February 1910, permitting the continuation of a tacit agreement in virtue of which the pastors in the diocese of Luxemburg retained a part of the stipend for the numerous High Masses which they had their assistants sing. But this is a very particular rescript which allowed this practice to continue "in view of the particular circumstances" ("attentis particuliaribus circumstantiis"). It

[1] We are not in a position to evaluate the force of such a practice, as we have not the necessary knowledge of the facts. One thing is certain: we have never received sufficient evidence that such a custom legitimately exists and have reason to surmise that it does not exist. The practice of some pastors does not make a diocesan custom.

[2] This question has frequently been treated in the pages of the REVIEW. It is unnecessary to discuss it further at this time.

[3] S. C. C., 23 Februarii 1726—*Fontes*, n. 3312. Cf. P. Gasparri, *De Sanctissima Eucharistia* (Paris, 1897), n. 671-672. But note that in the circumstances of this rescript it is not the assistant, but the holder of the benefice himself who must contribute toward the upkeep of the church from his stipend for a founded Mass.

cannot therefore be a basis for such a practice as is now under consideration. But what is most telling against applying this rescript to the United States is that the *particular circumstances* do not obtain here. The first reason for the practice found in Luxemburg is that in virtue of a *general custom* in that diocese the pastors permitted their assistants to retain various stole fees: no such general custom prevails in this country. Moreover the pastors were reluctant to break with the custom because they feared to arouse the faithful and disturb the harmony between the pastors and their assistants. Secondly, assistants who did not reside in the pastor's house nevertheless had frequently to be accommodated there.[4] Both of these circumstances cut deeply into the pastor's revenues and in view of these special circumstances the Sacred Congregation permitted the practice to be retained.[5] But neither of these conditions exists here and therefore the rescript for Luxemburg will not serve any purpose for this country.

What appears most likely to be the document referred to by our inquirer is a rescript cited in the above and printed in a footnote in the *Acta Apostolicae Sedis*. It is reproduced here in full.

> S. C. Concilii 25 Iulii 1874,—Archiep. Monac.—In parochorum reditibus etiam Missarum fundationes, singularum parochiarum propriae, et publicae functiones occasione exequiarum vel benedictionis matrimoniorum peragendae numerantur, quibus pro Missis fundatis sive casualibus certa stipendia ordinario maiora parocho assignantur, quae stipendia partem integralem beneficii parochialis constituunt. Quaeritur, utrum parochi impediti celebrationem harum Missarum alteri sacerdoti sic tradere debeant, ut totum stipendium constitutum pro celebratione talium Missarum solvant, an potius sufficiat ordinarium vel aliquanto maius ab Archiepiscopo statuendum, ita ut quod supersit ab ipsis parochis, quibus Missae eaedem in partem redituum assignatae sunt, tuta conscientia retineri possit.

[4] To understand this phase of the case it is necessary to bear in mind that neither the parish nor the assistant contributed anything to the pastor for the frequent occasions when the pastor had to provide him with his meals. In this country the pastor draws a share of the assistant's salary for the latter's board, or is remunerated therefore in some other manner by the parish. Hence this condition in Luxemburg does not offer just ground for pastors in this country retaining part of the stipend for the Masses which their assistants sing.

[5] *A.A.S.* II (1910), 203-204.

R. Attento quod eleemosynae Missarum, de quibus in precibus, pro parte locum teneant congruae parochialis, licitum esse parocho, si per se satisfacere non possit, Missas alteri sacerdoti committere, attributa eleemosyna ordinaria loci, sive pro Missis lectis sive cantatis.[6]

So far as this rescript speaks of certain functions at funerals and weddings, what was said above is practically in harmony with this rescript: the excess over the usual stipend, whether for a High Mass or for a Low Mass, is considered a stole fee accruing to the pastor.

It is to be noted that this rescript throughout speaks of Masses for which there are *stipendia pinguia* considered as constituting a part of the endowment of the parochial benefice (not a few being founded Masses). If these Masses constitute a part of the endowment of the parochial benefice and there are *stipendia pinguia* for them at hand, the pastor may retain that part of the stipend which is in excess of the usual stipend; but he must give the celebrant the usual stipend for a High Mass or the usual stipend for a Low Mass, as the case may be. But this rescript did not authorize the pastor to turn over to the celebrant anything less than the usual stipend.

What bearing has the rescript on the question under discussion? It is a private rescript that applies only to the Archdiocese of Munich. But even if one were to endeavor to draw an argument from it for this country, it would avail nothing to change the conclusion repeatedly presented in these pages.

In this country the entire revenue of the parochial benefice is recognized to be constituted by the annual salary drawn from the income of the parish. Pious foundations and the like, as spoken of in this rescript, are not considered a part of the beneficial income. Whatever increase of stipends at funerals and weddings is authorized is rather classified as a stole fee.

But if foundations for Masses erected in a parish and such increases of Mass stipends as are usually classed as stole fees really did constitute part of the income of the parochial benefice, no one could deduce from this rescript the right of a pastor to retain any part of the ordinary diocesan stipend for Mass celebrated by an assistant. On the contrary, it goes rather to confirm the conclusion constantly asserted in these pages, that the

[6] *A.A.S.*, II (1910), 204.

pastor must give the celebrant of a Mass the entire stipend received for the Mass, subtracting only that excess which is preferably classed among the stole fees or which is given *intuitu personae*.

In the several conferences referred to by our correspondents there was no mention of a High Mass with deacon and subdeacon. There was no intention of excluding them from a share in the fee. The intention of the donor as interpreted in fact as well as in the mind of the Church manifestly assigns a part of the fee to them. As a matter of fact some diocesan regulations expressly stipulate that part of the increased offering is to be given them for their services. The same applies to remuneration of the organist and, if a paid choir is called in, of the singers. In some parishes the school children sing at the High Masses on weekdays. Since they are not paid for their services, the fee is not increased and nothing may be subtracted from the regular stipend.

One of our inquirers speaks of the pastor of one parish retaining a part of the stipend for the Mass sung by his assistant: and of another pastor applying the part thus reserved for the church expenses. In this latter case it is only in an improper sense that the pastor can be said to retain a part of the stipend. In our previous discussions the question was whether the pastor could keep as his own a part of the stipend for the Mass celebrated by the assistant, but here the issue is whether a part may be subtracted from the stipend of the Mass celebrated by the assistant and applied to the church expenses.

This phase of the question had been decided by Innocent XII in the constitution *Nuper* of 23 November 1697 which embodied a declaration of the Council of 16 December 1693. There it was forbidden to subtract any part, no matter how small, of the stipend for the expenses for the upkeep of the church, altars, servers, vestments, lights, wine, hosts and the like, unless the church has no other means to defray these expenses; and in this case only so much could be retained as would suffice to cover the actual expenses that must be incurred for the celebration of the Mass.[7]

[7] "21. VII . . . Quaeritur, an permittendum sit, administratoribus ecclesiarum ut retineant aliquam eleemosynarum portionem pro expensis manutentionis ecclesiae, altarium, inservientium, paramentorum, luminum, vini, hostiae et similium? . . .
"28. Sac. Congregatio Cardinalium Conc. Trid. Interpretum, . . . "Ad VII

While the Code contains no explicit regulation concerning this phase of the question, the papal declaration referred to and other similar ones are certainly still applicable, since the rules for Mass stipends have not been changed in this respect.

Does the above declaration of Innocent XII justify a pastor in retaining a part of the assistant's Mass stipend for the expenses of the church? We do not think it does. First, it must be noted that Innocent XII permitted retention of a part of the stipend *only if the church was so poor* that it hadn't the means to provide for the necessaries for Mass. Are our parish churches so poor as all that? Seldom is it that a parish so poor has an assistant pastor. Secondly, even if the parish church were so poor, the assistant saying Mass there is rendering part of the services required of him. Even though he applies his Mass according to a special intention for which he receives a stipend, nevertheless even on weekdays his is in a sense a public Mass for the parish: the pastor assigns the time, according to the needs and convenience of the faithful. Hence too the parish, not the celebrant, must provide the means.

WHY ITALIAN POPES?

One of the characteristic marks and glories of the Catholic Church is its universality. It is spread throughout the whole world and among its members are people of every race, color, and nationality. The hierarchy, which is generally recruited from the native clergy, reflects this universality of the Church. But when we read the history of the papacy we find that the office of Sovereign Pontiff has in the vast majority of cases been conferred upon natives of Italy, and that since the year 1523 there has been an unbroken succession of Italian popes. This fact was emphasized by the secular press during the recent vacancy of the Holy See and some of our Catholic people did not understand why a catholic or universal church should select its highest ruler from the clergy and cardinals of one nation in

Respondit, permittendum non esse, ut ecclesia ac loca pia seu illorum administratores ex eleemosynis Missarum celebrandarum ullam, utcumque minimam, portionem retineant ratione expensarum quas subieunt in Missarum celebratione, nisi cum ecclesiae et loca pia alios non habent reditus, quos in usum earumdem expensarum erogare licite possint: et tunc, quam portionem retinebunt nullatenus debere excedere valorem expensarum, quae pro ipsomet tantum Missae sacrificio necessario sunt subeundae, . . ." —Gasparri, *De Sanctissima Eucharistia*, II, 440-442. Cf. S. Many, *De Missa* (Paris, 1903), n. 136.

so many instances. So far as is known, no explanation has been offered in our Catholic weeklies or periodicals. The writer has examined this problem from the historical standpoint and here attempts to show the reasonableness of there having been so many Italian popes.

It is a doctrine of our holy faith that the Bishop of Rome, as the successor of St. Peter, is the supreme ruler of the Catholic Church. This primacy of the Roman See has been acknowledged and taken for granted from the earliest centuries. But for almost a thousand years after the establishment of the Church the selection of the Sovereign Pontiff was entrusted to the clergy of Rome, together with the approval of the laity of the city and the bishops of the neighboring dioceses. This method of electing the pope gave rise to certain abuses: the nobles of the city and later the rulers of Italy seized control of the papacy and with a callous disregard for the welfare of the Church placed their own friends and relatives on the throne of St. Peter. In 1059 Nicholas II determined to remedy this evil by designating the cardinals as the papal electors, leaving to the clergy and laity of Rome merely the right of approval—a formality that was done away with in the following century. Later on, the papal elections became the direct concern of all Christendom when the different nations had their representatives in the Sacred College of Cardinals. But even now there was not a complete break with the past and a relic of the part once played by the Roman Church in the selection of its Bishop was still to remain. The cardinal bishops were the ordinaries of the sees about Rome, while the cardinal priests and deacons were appointed the titular heads of the older and more important churches of the Eternal City. In the hypothetical case that the College of Cardinals should become extinct during a vacancy of the Holy See the right to elect the new pope would devolve, not upon the bishops of the Catholic Church but upon the cathedral chapter of St. John Lateran in Rome.

In the first centuries of Christianity, the bishop of each diocese was usually selected from the clergy of the place. Rome formed no exception to this general rule, as Father Hartmann Grisar, S.J., informs us in his careful study of the early papacy: "The choice of a Pope was, in the first instance, the choice of a bishop for the Church of Rome. It was natural, therefore, that the

Romans should usually elect a member of their own clergy." As the Roman clergy was composed mostly of natives of the city or of Italy the large percentage of Italians among the first successors of St. Peter is not difficult to explain. There was no radical departure in this respect even after the cardinals became the sole papal electors, except during the thirteenth and fourteenth centuries when the French monarchy exercised an undeniable influence over the papal elections. The cardinals knew that an Italian pope would be best familiar with the language, customs, and traditions of the people among whom he would permanently reside and with whom he would come in such personal contact. They realized, furthermore, that the people of Italy who lived in the States of the Church and who acknowledged the popes as temporal sovereigns naturally preferred the government of a native to that of a foreign pope. This sentiment among the people gave rise to the famous and oft-quoted saying in the Roman dialect: " Vogliamo un romano o almanco un italiano "—We desire a Roman or at least an Italian pope.

The prestige of the papacy at the present time is perhaps as great as it has ever been in its centuries-old history. Thirty-six nations have now accredited ambassadors or ministers to the Holy See, an increase of fifteen in a single generation. Even Jews and Protestants who do not acknowledge the supreme spiritual authority of the popes have come to listen to their official pronouncements with the deepest respect and generally have applauded their solutions for the problems of the time. Only the important part which the papacy has come to play in world affairs explains the intense interest everywhere shown in the election of Pius XII.

Whilst all this is undeniable, the grim fact remains that since the formation of Italian unity and the forceful seizure of the papal states in the nineteenth century the external position of the Holy See has been far from favorable. The mutual concessions made by Pius XI and Mussolini in the Lateran Concordat of 1929 put an end to the vexing " Roman Question " by the formation of an independent Vatican City State. But in these days of swift and unexpected political changes who will dare to predict the future of Fascism after Mussolini? Is it entirely fanciful to imagine that the new leaders might be determined to translate the principles of totalitarianism into effect?

With such men in power the Concordat of 1929 would speedily be broken, and the Sovereign Pontiff in order to safeguard the rights of the Church would have to raise his voice in protest. Now were this pope a " foreigner," especially if he came from a country politically hostile to Italy, his enemies would hardly hesitate to exploit the fact. Over a government-controlled press and radio they could easily persuade their countrymen that the pope's opposition proceeded solely from his ignorance of Italian affairs, and from his hereditary dislike of Fascism and of the legitimate national aspirations of the Italian people. It does not follow, of course, that an Italian pope would have no difficulties with such a government, but at least the people of Italy would not be so easily deceived about the issues at stake. Their traditional pride in the fact that one of their native sons is the supreme ruler of the Church would prove one of the best safeguards of the papacy in this critical juncture of affairs, and would prevent the anti-clericals from proceeding to extreme measures against the Holy See.

In suggesting the reasonableness of Italian popes we have thus far limited our attention to the geographical position of the papacy and the intimate relations that exist between the Bishop of Rome and the people and government of Italy. But the Sovereign Pontiffs are also the rulers of the universal Church. Will the general welfare of the Church be better secured by the presence of an Italian than a non-Italian on the throne of St. Peter? The answer to this question will become evident by considering and contrasting the spirit of the medieval with that of the modern world.

During the Middle Ages the people of western Europe, though differing in race and tongue, regarded themselves as members of a single kingdom under the governance of God. This unity did not, it is true, put an end to wars and alliances, but the wars were never national in our modern sense of the term, nor did the alliances end at fixed frontiers. The Holy Father, as the Vicar of God among men, was the recognized mediator and final court of appeal in all disputes. His signature was often affixed to treaties of peace and made them sacrosanct. Had it not been for this unity the pope would never have been able to summon the rulers of Christendom in the gigantic crusades against Islam. Because of this international and supranational character of the

papacy it was possible during the Middle Ages to select non-Italian popes and as a matter of historical record there were occasionally natives of Germany, France, Spain, and even of England elevated to the papacy.

Toward the end of the Middle Ages this unity began to disappear. During the Avignon Captivity (1309-78) complaints were heard that the papacy had become subservient to the French government. This growing sense of disunity was reflected in the proceedings of the Council of Constance (1414-18), where the bishops voted according to the nations that they represented. The Protestant revolt of the sixteenth century put an end, perhaps forever, to the magnificent ideal of a unified Europe. Everywhere there arose kingdoms characterized by a narrow, aggressive, and egotistical nationalism. The new rulers fostered this spirit among their subjects by studied distrust and suspicion of their neighbors. By the twentieth century this ultra-nationalism had become the dominant factor in European politics. It led to the bitter World War of 1914 and is mainly responsible for the chaotic and highly explosive state of modern society.

It is by no means a coincidence that, since the appearance of this exaggerated nationalism in the sixteenth century, all the popes up to the present time have been natives of Italy. The Sacred College of Cardinals realized that the election, for example, of a German pope would arouse opposition in the countries politically hostile to Germany. Some Catholics in these lands might view the actions and pronouncements of this " German " pope with suspicion, for unfortunately religion does not always stifle national antipathies. His authority over millions of his flock would thus be compromised and endangered. The most practical solution of the difficulty has been to select the ruler of the Church from a country that would arouse the least antagonism in other lands. No better " neutral " country than Italy can be found. The See of Rome is located in the very heart of the Italian Peninsula and has ever been vitally concerned with the life of the Italian people. The Holy Father still styles himself " Primate of Italy ". For centuries before the appearance of nationalism the Catholic world regarded the election of an Italian pope as something that followed as a matter of course.

A careful study of the history of the papacy amply justifies the large number of Italians among the 262 successors of St. Peter. In the early centuries the decisive factor in such a choice was that a native of Italy would be familiar with the language and customs of the country and would be cordially welcomed by his subjects in the States of the Church. In more recent times the still precarious external position of the Holy See, resulting from the seizure of the papal states and the appearance of an exaggerated nationalism throughout Europe make the selection of an Italian highly advisable, and, in the opinion of many, a practical necessity.

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THE COOPERATIVE MOVEMENT IN RURAL PARISHES.

Emerson Hynes, reporting the recent convention of The National Catholic Rural Life Conference, at Vincennes, Indiana, in *The Commonweal*, 21 October, 1938, writes: " Most controversial of subjects discussed at the convention was the coöperative movement and consumer coöps in particular. A majority were agreed that under certain circumstances coöps are necessary to obtain justice for the farmer. . . . But since there was determined opposition by some to the recommendation of coöperatives as the number one technique for securing the farmers' economic betterment, no final or absolute endorsement of the coöperative movement was made. A special coöperative section will continue to analyze the essential substance of the movement and observe current developments."

Why all the controversy about the coöperative movement? Why this " determined opposition " by some to the coöperatives? The answer to these questions seems to lie in the confusion between the economic theory and practice of the coöperative movement in the United States. Father J. Elliot Ross, in a controversy on consumer coöperatives, wrote in THE ECCLESIASTICAL REVIEW, for October, 1938, p. 366: " I have not been able to work out to my own satisfaction how to attain social justice in a producers economy, but I am groping toward such a result in a consumer economy." Father Ross is not the only writer that is groping. One might go so far as to say that

the whole coöperative movement in the United States is groping. Does the coöperative movement lead to an economy of the consumer? Or is consumer coöperation merely one phase of a broad movement toward a total coöperative economy, as opposed to a competitive individualistic economy?

The opposition to the coöperative movement, and the confusion in regard to consumer coöperatives in particular, are due to the failure to distinguish between coöperation in theory and coöperatives in practice in the United States. The coöperative movement in this country has borrowed its theory from England, its practice from Denmark and Sweden. In the English theory of consumer coöperation there is much of socialistic principles. In the Scandinavian application of coöperative principles there is equally as much unsocialistic practice. Relative to the charge of socialism leveled against consumer coöperation, Bertram B. Fowler, in *Free America* for October, 1938, writes: "I can understand such a viewpoint only when I realize that these arguments against consumer coöperation are based on stated principles of the English movement which grew, we must remember, out of a class which had been landless for so many generations that they thought only in terms of collective action." Where those who make this charge err, according to Mr. Fowler, "is in lifting the philosophy of the English movement bodily and applying its tenets and texts to every other consumer movement that has since grown up."

The chief objection brought against consumer coöperatives on socialistic grounds is that the consumer societies advocate entering into the field of production. This is true of the English movement not only in theory, but in practice. The English consumer coöperative organizations actually own productive facilities. But it is equally true that in the practice of Denmark and Sweden producer coöperatives and consumer coöperatives have grown side by side and work in harmony. It is likewise true that in the United States, at least in the mid-West where the coöperative movement is strongest, many farmers are members of both producer and consumer coöperative associations. Their district consumer coöperative wholesale associations buy from producer coöperatives and sell to consumer coöperatives. A line of demarcation between the functions of producer and consumer associations is rather definitely drawn at the point of processing of products.

Another question wherein socialistic tenets appear in writings on consumer coöperation, and where practice is equally unsocialistic, is that of undeclared rebates, sometimes referred to as " social capital ". Undeclared rebates represent profits made by a consumer business enterprise that have been withheld from distribution. According to coöperative principles, any profit remaining after costs of running a consumer coöperative business is to be returned to the member-patrons as rebates in proportion to their purchases. Under the capitalistic system, such profit goes to the owners in proportion to their ownership. But in consumer coöperative practice, a percentage of the profit is usually allowed, by vote of the stockholders, to remain in the business as surplus or revolving fund reserves, thus furnishing capital for expansion. Some theorists hold that this withheld profit should become the property of the association as such, called " social capital," and should no longer be identified with member patronage. In this view, when a member withdraws from a particular coöperative enterprise, because of removal, settling of an estate, or other cause, his share capital is paid back at par value; but he loses all claim to accumulated past rebates to which his patronage has entitled him.

In gathering opinions and actual data on business practices relative to profits withheld from distribution, several coöoperative leaders in both the educational and business fields were consulted. In general, prominent Eastern writers on consumer coöperation take the social capital view of the question. Mr. E. B. Bowen, Secretary of The Coöperative League of the U. S. A., goes so far as to urge that undeclared rebates, even in cases of dissolution of the coöperative business enterprise, should not be returned to member patrons, but should accrue to some educational agency for the promotion of the coöperative movement. On the other hand, the actual business leaders consulted were of the opinion that coöperative societies should give attention in their by-laws to the segregation of these undeclared rebates in such a way as to identify them with past patronage of members. The coöperative associations affiliated with the Northern States Coöperative League have such by-laws. The state laws of Michigan, Minnesota, and Wisconsin, among others, which make provision for chartering consumer coöperative associations, specifically require that rebates withheld from distribution by

consumer societies must be accounted for on the basis of past patronage. The National Society of Coöperative Accountants, composed of accounting officers and auditors of coöperative business associations, in its annual meeting in October this year went on record as advocating a like procedure.

Another common charge against consumer coöperation is that of its similarity to the chain-store system. Anyone acquainted with marketing in this country is aware of the advantages of mass distribution over the older economy of manufacturer, broker, wholesaler, retailer distribution methods; although one might question whether or not these advantages actually reach the consumer. The consumer coöperative technique utilizes the advantages of direct marketing, but its organization and results are entirely different from those of the chain-store system. Whereas the chain-store is dominated from a central organization down through the retail outlets, in the consumer coöperatives final control rests with the local stores. The local associations own the wholesales, which are managed by officials duly elected by the representatives of the local group. The wholesales, in turn, own and select the management of the central organization, which purchases for the wholesales under special contract from manufacturers.

There is, of course, the danger that an uninformed membership in consumer coöperative societies will allow the central organizations to dominate all policy through neglect of exercising the right of representative voting. This charge has been made against the English coöperatives. On the other hand, Denmark has perfected a new technique of adult education through its coöperative educational program. This very danger of an uninformed membership is the reason for so much stress upon education first and action later in the program of St. Francis Xavier University in Nova Scotia. In the mid-West, the more progressive consumer coöperative wholesale associations have an active educational department which sponsors local discussion circles or study groups among the members of affiliated retail societies, and gives these local groups study material for systematic training in coöperative theory and practice. The wholesales also conduct training schools for employees of local associations, and hold short-course sessions for educational and managerial training of local group leaders.

Another charge of similarity between consumer coöperatives and the chain-store system is that both tend further to reduce the number of owners of small or moderate property holdings. The charge is misleading. If it refers to the small independent business man, it is the writer's view that economic progress has doomed the independent retailer at the end of the economy of manufacturer, broker, wholesaler, retailer system. The small independent business man is passing on. He served his function in an older economy, but his function is being absorbed by others in a changing economy. His loss may be unfortunate, but his place has long been endangered by the chain if not by the consumer coöperative association. The cry of the politician and the Chambers of Commerce for the salvation of the small independent retailer is a cry in the face of progress.

And if the charge of similarity between the chains and consumer coöperatives refers to the consumer-owner of the local retail societies, what property or control has the consumer in American Can, General Foods, Borden Products, Phenix-Kraft, Kellogg's, or in A. & P., Kroger's, Kresge's, compared to his share-membership in a consumer coöperative store, which buys his groceries under the label " Co-op "? Certainly, a consumer may hold stock in either system. But in the one he votes on the policies of the local store at home, and chooses a fellow-member as his proxy for the meetings of the wholesale association. In the other, if the stockholder has a vote at all, he usually must go to New York to vote, or have his proxy chosen for him by the financial barons at the head of the system.

Writers who have attended membership meetings of coöperative associations have at times described these meetings as being filled with religious enthusiasm. But they are not; at least the ones the writer attended were not. It was rather the enthusiasm of people confident in themselves, confident that they were sharing directly in the working out of their common economic destiny. They were farmers solving one-half of the farm problem, city consumers solving one-half of the wage problem. Both groups saw their dollars purchase more goods. One coöperatively owned retail oil and gas station showed a year's profit equal to the capital investment of the members. This station sold " Co-op " gas at regular prices. Its employees, who were also stockholders, received better wages than their neighbors

employed by the major oil company stations across the street. The money represented by that profit stayed in the hands of the consumers of the community. The profit on the gasoline sold by the major companies trickled out of the community, to pay the salary of some major oil company executive, as fast as the gasoline was brought in.

It has been the writer's privilege to be in close contact with both the business and educational work of the Consumers Coöperative Association, a wholesale, at North Kansas City, Mo. Associated with him in a study club is a group of Catholic college professors, who two years ago formed the club to acquaint themselves with the various phases of the coöperative movement. Discussion meetings have been held weekly during this period of study. It is the unanimous opinion of the members of this group that the mid-West coöperative associations are not socialistic but Scandinavian. Members of the group contribute articles to the newspaper published by the North Kansas City association. They also take an active part in promotion of the program for discussion-groups sponsored by this association among the members of the local affiliated retail societies.

One may well believe that the salvation of the rural parish, and for that matter the saving of democracy, lies in the coöperative movement. It is common knowledge that there is no economic democracy in the United States, and a common belief that political democracy without it will vanish. But there is economic democracy in the Scandinavian countries, and one hears little of Communism or Fascism there. If economic democracy can be attained, it will have to come from the farm. The solution of the agriculture problem is basic to the solution of the industrial problem. And the agriculture problem lies chiefly in this: the rural population pays too much for what it buys, meanwhile contributing directly to the concentration of wealth under the present system, and it receives too little for what it produces. This has led to the dissipation of farm capital to the extent that even the conservatives are alarmed at the increasing farm tenancy. But the answer to this problem in the United States, as in Denmark and Sweden, lies in the technique of producer and consumer coöperatives, with credit unions,

growing side by side and understood by the members who use them.

A local Kansas producer coöoperative creamery and egg marketing association is to-day paying above market prices to farmers for their produce, selling that produce to a hotel-chain organization in New Jersey where the produce is trucked, and returning to member patrons additional rebates at the end of the year. There is the technique for the solution of the other half of the farm problem—getting more for what the farmer has to sell. But the biggest of all problems is getting to the agricultural and laboring classes a knowledge and understanding of the possibilities of the coöperative movement. To one who has read the great social encyclicals, the answer to this last seems to lie, so far as Catholics are concerned, with the parish priest. In his encyclical on Atheistic Communism, Pope Pius XI wrote: "To priests in a special way We recommend anew the oft-repeated counsel of Our Predecessor, Leo XIII, to go to the workingman. We make this advice Our Own, and faithful to the teachings of Jesus Christ and His Church. We thus complete it: 'Go to the workingman, especially where he is poor; and in general, go to the poor.'" The farmer in the United States to-day is poor. And the pastor who goes to his people with a program that will put money into their hands, instead of the usual program of taking money from them, will find a people only too willing to listen to the teachings of the Church instead of listening to those of the Communistic agitator. The Master fed the multitudes as well as preached to them. A great religicus order once taught nations how to farm and then converted them. To-day the diocesan clergy of Antigonish are pointing the way.

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EASTERN NOTES.

POPE PIUS XI. The late Pope himself said that work for the reunion of the Christian East with the Holy See was not simply one, but the undertaking of his pontificate. Certainly he was a most worthy follower of Leo XIII in this as in other respects, and the work he did for orientals, whether Catholic or not, was

prodigious. But even greater than their exterior aspect was the wide-minded, candid and irenical spirit in which they were undertaken, a spirit that has spread wide among workers in the field, and which they regard as their most precious heritage from a very great pontiff. "Give rest to the soul of your servant, O Lord, among the righteous who are departed: grant to him the blessedness of eternal life, O Lover of men."

A Semitic Cardinal. Among the cardinals assembled together to elect the new Bishop of Rome and Supreme Pontiff is one of Eastern rite and Semitic race, his Eminence Gabriel Tappuni, Syrian Patriarch of Antioch. This is apparently the first conclave at which an oriental has been present since that of 1471, when Sixtus IV was elected. Historically and from its nature the office of cardinal is radically in relation to the local church at Rome, and consequently eastern cardinals have been very rare. There have indeed been only five cardinals from the Eastern church before Cardinal Tappuni: they were the Greeks Bessarion and Isidore of Kiev (created 1439), the Ruthenians Levitsky (1846) and Sembratovich (1895), and the Armenian Hassun (1880). At the conclaves of 1455 and 1471 the great Bessarion was himself favored for the papacy, and on the first occasion at least was very nearly elected.

New York. There has been considerable activity lately in and around New York in bringing Western and Eastern Catholics together. Father Andrew Rogosh, Russian priest in New York, has celebrated the Byzantine Liturgy at the Diocesan Seminary, Manhattanville College, New Rochelle College, and Fordham University, the whole student body attending in each case; and the Vartapet Maljian, Armenian priest in New York, has celebrated the Liturgy according to the Armenian rite at the Brooklyn Diocesan Seminary and elsewhere. There was a project afoot for a three-day Eastern-Churches gathering during the Chair of Unity octave in January, under the auspices of Fordham University, but at the time of writing your contributor has received no report of its proceedings.

The Catholic Copts. After a vacancy of four years the Coptic diocese of Hermopolis Magna, whose see is at Minieh in Upper Egypt, has been filled by the appointment of Abba George Baraka. His consecration at Minieh, by Abba Mark

Khuzam, Bishop of Thebes and apostolic administrator of the patriarchate of Alexandria, was an occasion of historic interest in that it was the first recorded time that an Egyptian bishop, whether Catholic or dissident, had been consecrated in Upper Egypt. This is a breach with a custom of ten centuries' standing, which would have the bishops of Egypt consecrated at Alexandria or Cairo. Moreover, it was a fine example of Catholic unity-in-diversity, for the co-consecrators were bishops of respectively Latin and Syrian rite. The Catholic Chaldean vicar patriarchal was also present, as well as official representatives of the dissident Coptic Church and of the Mohammedan civil authorities.

RUSSIAN LITURGICAL BOOKS. The Byzantine monks of Grottaferrata, near Rome, have been entrusted with the printing of the new edition of the Slav-Byzantine liturgical books according to Russian usage, and, judging by their Greek *Horologion* issued in 1917, it will be as well done as any of the Kiev and Moscow editions. The first book to be undertaken will be the *Sluzhebnik,* which is, roughly, a compendium of missal, vesperal, etc. The preliminary work has all been done, but printing cannot begin till more funds are available. As many copies of the books will have to be given away to needy priests, an appeal has been made by Cardinal Tisserant, secretary of the Sacred Eastern Congregation to the faithful at large to help. Contributions may be sent direct to his Eminence at 76 via Borgo Nuovo, Rome.

NOTES. The Melkite Patriarch of Antioch has ordained to the priesthood at Cairo Father Habib Ayrut, the first Jesuit to be ordained in the Byzantine rite in the Near East.

The Holy See has conferred the dignity of titular archimandrite on Father Dumont, O.P., superior of the Dominican centre of Russian studies (" Istina ") at Paris.

Father F. J. Wilcock, S.J., priest of the Slav-Byzantine rite, has left England to take up work among the Russian refugees in Shanghai. His confrère, Father J. H. Ryder, is already established in the Russian district of Estonia, near the U.S.S.R. frontier.

DONALD ATTWATER.

Saint Albans, England.

MAY EXORCISM BE RECITED BY LAY PEOPLE?

Qu. A leaflet presents a French translation of the *Exorcismus in Satanam et Angelos Apostaticos* contained in the *Rituale Romanum*, titulus XI, cap. 3. The French translation which bears the *Imprimatur* of the Vicar General of Fribourg, Switzerland, dated 13 July, 1928, indicates in two notes that this exorcism can be recited by lay people, while the *Rituale Romanum* allows it to be used only by bishops and such priests as may be authorized by them.

May lay people use this form of exorcism?

Resp. As our inquirer indicates, this is a reserved exorcism that no priest may lawfully employ in the exercise of his order of Exorcist except by authority of his ordinary. If the priest is empowered to employ this exorcism only by leave of his ordinary, there is less reason to recommend it to the use of the laity, as is done in the footnote of the leaflet.

A different question regards the laity's assistance when a duly authorized priest recites this exorcism. The laity are to be encouraged to unite more closely with the priest not only at Mass but also at other functions, especially those laid down in the Ritual. But it seems to be going too far to recommend the recitation of this exorcism by the faithful alone. Just as in other functions, so here they are not to supply for a priest and in his stead to use the prayers authorized by the Church for use by priests in the capacity of their order.

There is this further danger in recommending the private recitation of this exorcism—that some will magnify the influences of the evil spirits to a degree that may lead to very unwholesome situations.

WHEN THE FIRST FRIDAY FALLS ON GOOD FRIDAY.

By courtesy of *The Messenger of the Sacred Heart,* we reprint the following:

The First Friday of April this year falls on Good Friday. Since Holy Communion is not distributed on that day can I continue my "Nine First Fridays" by receiving on the Saturday or Sunday following Good Friday?

While receiving devoutly on the Saturday or Sunday following the First Friday will be an act pleasing to the Sacred Heart and worthy of a reward from that Fount of love, there is absolutely no authority for

the opinion that by so substituting Saturday or Sunday one fulfils the conditions laid down by our Divine Lord for obtaining that special reward mentioned in the twelfth Promise of our Divine Lord to St. Margaret Mary. Nor do we believe there is any authority for the opinion advanced by some that it suffices to continue for a tenth month because of the necessary omission on Good Friday.

All we know about this great Promise is what we have from St. Margaret Mary, who related that our Lord appeared to her and among other Promises declared: " I promise thee in the excessive mercy of My Heart that My all-powerful love will grant to all those who communicate on the *First Friday in nine consecutive months* the grace of final penitence; that they shall not die in My disgrace nor without receiving their Sacraments; My Divine Heart shall be their safe refuge in this last moment."

Speculative theorizing about some other day being substituted for the First Friday is futile and useless. Our Lord specified *nine consecutive First Fridays* and His Promise is so marvelous that we should take no chances of substituting other days. In fact, we should make assurance doubly sure by making it our life practice always to receive on every First Friday unless Good Friday falls on that day.

OBLIGATION OF ASSISTING AT MASS ON SUNDAY.

Qu. Apropos of the statement in January number of the REVIEW, that a member of a CCC camp probably fulfils the obligation of hearing Mass on Sunday by attending Mass said on a portable altar, may I ask for an answer to the subsidiary question. If a CCC man cannot certainly fulfil his obligation of hearing Sunday Mass, has he any obligation of *probably* fulfilling it by hearing Mass said on a portable altar?

Resp. An altar in a CCC camp is not necessarily referred to in the January number of the REVIEW. It is possible that the bishop of the diocese where the camp is located has erected or designated an oratory and declared it public or semi-public. In this case the altar in the oratory probably will be a portable altar as opposed to a " fixed " or immovable altar. Catholic members of the camp are undoubtedly obliged to attendance at Mass in such an oratory. If, however, a priest celebrates Holy Mass, e. g. in an auditorium, using his privilege (cf. details of privilege) or celebrates Holy Mass with the permission of the bishop (cf. C 822, § 4), it is not altogether certain that attendance at such a Mass is sufficient to fulfil the obligation of the Sunday

precept. The writer believes that assistance at such a Mass suffices and would therefore hold the CCC members to the law of Sunday observance. Those who do not believe this, may use the principle behind a probable obligation and excuse CCC members from the law.

REASON FOR REVOCATION OF FACULTIES.

Qu. Why did the Church take away from priests the faculty to attach indulgences to rosaries? Many are asking this question and, in view of the fact that the Church so much desires the faithful to use their beads, some of us here would thank you for an answer.

Resp. From the beginning of the reign of Pope Pius XI a definite trend to revise grants of indulgences and of faculties to attach indulgences to pious exercises and religious articles was quite noticeable. As examples of this trend may be mentioned the decrees of the Sacred Penitentiary concerning the Portiuncula indulgence,[1] the Station Indulgences,[2] the so-called Station of the Blessed Sacrament,[3] the Way of the Cross.[4]

To this trend the Sacred Penitentiary itself refers in the decree "*Consilium suum*" of 20 March 1933,[5] which revoked as of 1 April 1933 concessions made to certain pious associations, so that priests who on that day were not members of such associations or members who were not yet ordained priests or (in regard to certain of those faculties) who, although priests, had not yet been approved for hearing confession on this latter date, did not

[1] Decr. "*Ut septimi*" de normis in concedenda et lucranda indulgentia Portiunculae, 10 Iulii 1924—*A. A. S.* XVI (1924), 345-347. Cf. "The Portiuncula Indulgence", Ecclesiastical Review, LXXXI (1929), 5-22; "Two Declarations Concerning the Portiuncula Indulgence", *op. cit.*, LXXXIII (1930), 90-92; "Indulgence of Original Portiuncula Chapel Modified", *op. cit.*, XCIII (1935), 620.

[2] Decr. "*Ut fideles*", de indulgentiis "stationibus" adnexis, 12 Aprilis, 1932—*A. A. S.* XXIV (1932), 248-249; Ecclesiastical Review, LXXXVII (1932), 287-288; declaratio, 25 Februarii 1933—*A. A. S.*, XXV (1933), 72.

[3] Decr. "*In non paucis*" de quibusdam indulgentiis adnexis recitationi "Pater, Ave et Gloria" sexies repetitae, 22 Aprilis 1933—*A. A. S.*, XXV (1933), 254-255; Ecclesiastical Review, LXXXIX (1933), 169-170.

[4] Decr. "*Pius* 'Viae Crucis'" de indulgentiis pio "Viae Crucis" exercitio adnexis, 20 Octobris 1931—*A. A. S.*, XXIII (1931), 522-523. Cf. "The New Indulgences for the Way of the Cross", Ecclesiastical Review, LXXXVI (1932), 284-287.

[5] *A. A. S.*, XXV (1933), 170-171; Ecclesiastical Review, LXXXVIII (1933), 618-619. Cf. "Revocation of Certain Faculties and Indults concerning indulgences", Ecclesiastical Review, LXXXVIII (1933), 621-622.

and do not obtain the respective faculties upon joining such associations or upon being ordained or approved as confessors after that date.[6]

In making the allusion to the above-mentioned trend the Sacred Penitentiary states that this decree is arrived at in pursuance of its plan to reform the entire matter of indulgences, as it had already done in certain other respects; that its purpose is to regulate better the faculties of attaching indulgences to pious works or religious articles and certain other similar indults for which priests were wont to apply.

Apparently the situation had gotten out of hand. Numerous associations had obtained concessions for some or all the faculties and privileges withdrawn by this decree, with the result that on the one hand the Holy See which in the first place has the right to grant such faculties and indults had little opportunity to bestow them, since priests preferred to enroll in one or other of those associations; on the other hand there arose unbecoming rivalry among pious associations to obtain more bounteous faculties and privileges and to enlarge their membership.[7]

However, the revocation of the concessions made to pious associations does not imply—as our inquirer seems to suppose—that priests must forego the faculties and privileges that could formerly be obtained by their joining certain of those societies. On the contrary, the decree gives the very positive assurance that priests can still obtain such faculties and indults; but henceforth they must obtain them through their ordinaries directly from the Sacred Penitentiary.

[6] S. Poenitentiaria Ap., dubia, 2 Martii 1937—*A. A. S.*, XXIX (1937), 58. On the other hand priests and confessors who were members of such associations on 1 April 1933 did not lose the faculties they had already acquired in virtue of their membership. Cf. "Faculties Acquired Before 1 April [1933] Not Revoked", ECCLESIASTICAL REVIEW, LXXXIX (1933), 182.

[7] Cf. P. Maroto, "Adnotationes", *Commentarium pro Religiosis*, XIV (1933), 129.

Book Reviews

THE TRUE VINE AND ITS BRANCHES. By the Rev. Edward Leen, C.S.Sp. New York: P. J. Kenedy & Sons. 1938. Pp. 268.

It has frequently been remarked that one is mystified by many of the books on the Mystical Body. More than one writer has failed to gain a second reading of his attempt to elucidate this doctrine which is so needed in our day. Theologians may find no difficulty in the word *mystical,* but it is far from easy to explain the term to people groping for appreciation.

Father Leen never mystifies his readers. No one would venture a guess on how many have done him the compliment of reading his works a second and third time. Not that a second reading is required to grasp his points, but the richness of his meditated knowledge merits constant re-mining. No dry learning clogs the passage of his message. Somewhere in each chapter a sentence will crystallize the thought of the whole chapter. One is made to realize that here is a master of the spiritual life. He searches the soul of the reader and one feels no hesitation in putting any of his works into the hands of those hungry for spiritual meat.

The work under review is a treatise on the Mystical Body. The very title, however, shows that the author knew enough to follow the expressions of his Master when attempting to drive home what the Master taught. Among the works treating of the Mystical Body this volume might be termed unique. Such expositions as Anger-Burke bring out the theology of the doctrine, but *The True Vine* gives one a taste of the sap flowing. Mersch is followed in a few spots, but on no one writer does Father Leen depend. He has read widely and absorbed wisely. His main fount is the Scriptures.

There are fifteen chapters in the neatly printed book: Assimilation to Jesus; Re-capitulation in Christ; The Sacred Sign of Calvary; The Sacred Sign of the Christian Altar; The Principle of Unity in the Mystical Body; The Bread of Life; The Quality of True Prayer; Living the Life of Faith; The Sufferings of the Mystical Christ; The Commandments of Christ; The Fundamental Principle of Christian Asceticism; The Wisdom of Spiritual Childhood; The Full Flowering of the Christian Spirit; The Mother of the Redeemer; The Mother of the Redeemed. One may note that there is a wide variety in the approach to the central truth, although the mortal life of Christ has been treated in a previous work. The author shows far more clearly than most writers the function of the humanity of Christ in the concept of the Mystical Body. One might well come to this work just for an under-

standing of the Mass and Holy Communion. It is particularly sane on the subject of suffering. "Suffering is not necessarily a good, nor human well-being necessarily an evil. . . . The decay of the Christian spirit in the modern world is marked by a growing tendency to look for a Messiah that is not crucified. Christ on the Cross is a discomfort to many who profess His name. . . . Jesus was neither morbid nor evasive. His human character was amazingly simple. Christ, if one is to speak accurately, did not court hardships and trials. He simply accepted a human lot." And why Christ accepted is well shown in the theme which predominates this work, namely, that sanctity lies in submission to and yearning for union with God. Phases of this principle are exemplified in the portrayal of the "unqualified docility of Jesus," and the superbly treated notion of spiritual childhood. They are all implications of the fact of being branches of the Vine.

If there be any defects in this much to be recommended work, they may arise from the failure of the author to balance his exposition of submission with an equally strong impetus on the duty to love of neighbor. The disposition of love of neighbor is fostered, but there is a weakness in the portrayal of doing good to one's neighbor. Some readers will also find strained passages in the author's effort to emphasize Mary's part in the Redemption. It is easy to assert that at the Annunciation she "had a prevision of the destiny to which she was committing herself," but proof is another thing. Mary suffered, but to state that "she suffered all His sufferings in herself" is to make one wonder what St. Paul would say in reply.

INTRODUCTIO IN CODICEM. By the Rev. Ulrich Beste, O.S.B. St. John's Abbey Press, Collegeville, Minn. 1938. Pp. 1000.

In this volume the author singles out the pertinent words and phrases of the canons of the Code as a basis for his succinct commentary on the current law of the Church. This method presupposes, of course, the use of the Code itself as a text in connexion with which the author's excerpts may be collated for study.

The commentary, after indicating in suitable outline the fundamental sources of the Church's law in its past history and present application, covers all portions of the Code save those dealing with the sacramental discipline. The sacrament of Orders is, by way of exception, treated in full. In reference to the remaining sacraments the various official decrees, instructions and interpretations which aid in the better understanding of the canons are exhaustively indicated.

It may be questioned whether in a commentary on the Code the Church's disciplinary legislation on the sacraments should be excluded, even partially, as is here done, in favor of the claims of moral theology.

It may also seem that, in a book meant primarily for study in seminaries, undue prominence is given to the tract *De religiosis,* which occupies more than 150 pages (pp. 303-456), as compared with the commentary on Book V of the Code, which comprises just over 100 pages (pp. 873-973). The index, which is arranged rather as a supplement to the index contained in the Code itself, definitely occasions the inconvenience of having to consult two indexes to find one's way in the volume.

Apart from these factors, which are among the less commendable features of the *Introductio,* the volume stands out as an excellent commentary. It will hold a high place among the texts that can be recommended for seminaries in the United States, especially since it reveals a comprehensive understanding of conditions as existent in this country and offers a sympathetic interpretation of canonical principles within the perspective of these conditions. Its adaptation for use in American seminaries is thus very significantly warranted, for the volume offers a definite doctrine on matters which could hardly, or at most only with an approach to accuracy, be envisaged by foreign commentators as demanding such specific treatment.

CATHOLICS AND SCHOLARSHIP. A Symposium on the Development of Scholars. Edited by the Rev. John A. O'Brien, LL.D. With a Preface by His Excellency, Archbishop John T. McNicholas, and an Introduction by His Excellency, Bishop Hugh C. Boyle. Huntington, Indiana: Our Sunday Visitor Press. Pp. xvi + 256.

It has long been asserted, both inside and outside Catholic educational circles, that the Church in this country has not produced her share of scholars, artists and scientists. This volume practically admits that we have been content to point to the achievements of the past, and have neglected the necessity of developing top-ranking scholars for the present. The symposium is a study of the present. It examines the various fields of knowledge and learning objectively and dispassionately. There is a deal of criticism, but nearly all of it is constructive.

The first part considers the " present situation ". Four chapters are by Dr. O'Brien, one by Philip Burke and one by Justin West. Part II takes up the " development of natural scientists," and Part III, " eminence in the social sciences ". These chapters are contributed by outstanding Catholic scientists and educators. Part IV is concerned with " constructive measures for scholarship," the contributors being the Rev. Drs. Cooper, Bergin and LeBuffe. Part V, by well known Catholic writers, gives the " prospect for Catholic literature ".

The editor has chosen his collaborators well, and they have been sufficiently interested in the problem to give it thought and to express their thoughts clearly and cogently. No one man is likely to agree with everything that is written by the various authors, but he can agree with most of it, and the book is certain to be productive of good results.

IN DIVERS MANNERS. By R. H. J. Steuart, S.J. London: Longmans Green and Co. Pp. 158.

With the exception of the first two chapters, this book, like innumerable others, is a collection of pious, albeit rather nebulous musings on various parts of Catholic dogma. The author declares his intention to " exercise the powers of our intellect upon " the teaching of Christ. This is the function of sacred theology, and the volume under consideration gives little indication in some of its chapters at least of dependence upon the standard literature of this science. The book does not manifest that intense and almost scrupulous anxiety for accuracy in the statement of sacred doctrine which Catholics have a right to expect in works of theological moment. " The world, mineral, vegetable, animal, human—collectively and individually—is something that God is doing " (p. 102). The substitution of the word *do* for *make* in this case is unfortunate. There is ambiguity in the teaching on page 75—" the knowledge of Him that we can have and are meant to have is not a mental representation of Him as He sees Himself but rather an experimental knowledge of Him in His action upon us, a knowledge far less of the intellect than of the heart "—when this statement is seen in its context.

The first two chapters are less traditional and exact than the rest of the book. " The Higher Pantheism " is, to put it mildly, a misleading title for Christian doctrine. The author of course is perfectly orthodox. But it is a matter of questionable pedagogy to say that " the Christian may derive so much profit from a recognition of the element common to his own faith and the error of the Pantheist that it may awaken in him a clearer perception of his place in the grand order of God's universe; " or to wonder, " is it an exaggeration to say that the Christian may yet learn much from the pantheist? " (p. 21). There is carelessness in the statement that, as regards the lovableness of man, " Everything to him that is not downright evil (and do we know where to rule the dividing line?) is irradiated with divinity " (p. 34). The question is out of place in the context.

The book is a reminder of the need for solid theological studies, and for their application in the popular works presented to the Catholic public.

DU SENS ET DE LA FIN DU MARIAGE. By Dr. Herbert Doms. Translated by Paul and Marie Simone Thésse. Desclée de Brouwer, Paris. Pp. 240.

The general thesis which this book sets out to establish is that marriage should not be considered merely as an institution intended for the procreation and education of children, but rather as a society, a community of interests and of mutual love between man and wife.

Saint Thomas lays down as the chief principle in the light of which the questions of marriage and the virtue of temperance are to be solved, that the sex faculty is intended for the procreation and education of children, and since the second of these purposes cannot be achieved without an enduring union of man and wife, he concludes that every exercise of this faculty outside legitimate marriage is illicit. The author offers no objection to the moral conclusions of Saint Thomas; it is to the principle itself that he takes exception, and it cannot be denied that he makes out a very fair case.

It is not within the scope of a book review to answer the arguments proposed point for point. In this case particularly it would be difficult, since the arguments are so cleverly drawn and the objections to the doctrine so extensive and plausible that to answer it adequately would require comment upon almost every page of the book.

Besides the fact that it defends a viewpoint that is at variance with that of the Angelic Doctor—and in this case not an isolated theory that can be taken or left, but one which is intimately bound up with his general philosophy and synthesis—the book labors under the following difficulties. It does not sufficiently differentiate between the individual and human nature itself. It is open to the same objections that the author brings against the principles of Saint Thomas, and from that point of view can hardly be said to be an improvement. It makes pleasure a purpose and not an incentive. Finally it presupposes too much and does not penetrate the profound depths of the questions attained by Saint Thomas. It does not subordinate the purpose of mutual aid and love to the purpose of procreation, but rather makes the one entirely independent of the other, without giving any reason why in the plans of the Author of nature there should be any need for mutual aid and complete surrender independent of all consideration of offspring. For instance, one cannot argue from the mere differentiation of sex as a principle. He must go further. He must discover why such differentiation exists. Considering human nature as a whole, the union of man and woman is for the perpetuation of the race. Everything else is subordinate to it. If we consider the union of this man and this women, it may be that this purpose is not attained, but that is *per accidens* so far as nature itself is concerned. And nature,

not the individual must provide the principle. To argue analogically from the individual aspects of food and drink, for instance, to certain conclusions regarding sex is perfectly legitimate. To draw exactly the same conclusions however is to destroy analogy completely.

On the other hand, the work has much to recommend it. It provides a splendid treatment of the biological and psychological aspects of marriage, bringing to bear a great deal of modern scientific knowledge that is extremely valuable. That Saint Thomas was ignorant of these facts, however, in no way affects his philosophical and moral conclusions. He was well aware of the essential fact that offspring results from the union of man and woman. It may also be remarked in passing that these same detailed facts were hidden from the minds of the other early theologians whom the author cites in favor of his thesis. The things that modern science has discovered in these matters are important and valuable. It would hardly be safe to venture an opinion about what science would discover if the race were perpetuated in some other way.

Book Notes

Those interested in Catholic Action are vitally interested in what is being accomplished by Actionists in other lands. The coming of the Pax Romana convention to Fordham and The Catholic University this summer has increased interest in the European methods and results of Catholic Action.

Restoring All Things, edited by the Rev. John Fitzsimons and Paul McGuire, tells what is being done in Italy, Belgium and France, and why it is being done. Catholic Action is the Mystical Body at work, and Father Chenu contributes a chapter on this point. Its connexion with the liturgy is discussed by Dom Lefebvre, and Canon Glorieux of Lille takes up Catholic Action and the Priest. The chapter, "The World Scene of Catholic Action," by the editors is sketchy but informative. The book is far from being complete, and some questions that one would naturally expect to be answered do not appear at all; but it is practical and a book that is needed. The omissions are probably explained by the reference of the editors to the books of Msgrs. Civardi and Guerry, Father Lelotte and the collected documents of the late Holy Father. (New York, Sheed & Ward, 1938. Pp. xiii + 326.)

A book that will appeal to lovers of Franciscan asceticism is *Capuchin Spirit and Life* by Fr. John of Meerle, O.M.Cap. The volume, which is printed as a manuscript by the Mission Press, Techny, Ill., was adapted and translated from the Flemish by Fr. Emmanuel Roets and Fr. Berchmans Bittle.

The work is divided into two parts. The two chapters of Part I are "The Excellence of our Holy Vocation" and "The Six Wings of the Seraphim", a series of conferences on obedience, poverty, chastity, humility, simplicity and love. The second part considers "Various Exercises" of the Capuchin friar, "Manual Labor," "Various Offices of the Lay Brothers" and "Special Franciscan Devotions." The Flemish original is considered one of the best treatises on the Capuchin interpretation of the spirit of St. Francis. The purpose of the present translation is to give English readers an opportunity to become acquainted with the fresh and simple fervor of the author, and to stimulate its readers "to enthusiasm for their Franciscan, respectively, Capuchin, heritage". (Pp. x + 371.)

Benziger Brothers present in their Catholic Knowledge Series of reprints, *My Faith, What does it mean to me?* by Dom Hilaire Duesberg (pp. 274); *The Art of Living with God*, by the Most Rev. Joseph Busch, S.T.D. (pp. 219) and *To Whom Shall We Go*, by the Rev. Frederick MacDonnell (pp. 200). Books and authors are so well known that there should be a good demand for these volumes in the new, lower-priced format.

The Continuity of the Church of England, a S.P.C.K. tract by Dr. Eck, is quite popular on the "tight little isle," and is often quoted in Anglican parish papers. So popular was it in his vicinity, that Father Hoare, parish priest at Whetstone, North London, felt obliged to write a series of refuting articles in his own parish publication. They now appear in a pamphlet *Continuity*, privately printed by the author. (London, N. 20, 6 Athenaeum Rd. Pp. 112.)

A convincing array of authorities has been marshalled on the Catholic side of the question, and one is surprised that the author could get so much information into a little more than a hundred pages. There is not so much interest in the question on this side of the Atlantic, but if a parish priest wants something on his shelves in case the question does arise, the letter of 13 September 1896, *Apostolicae Curae*, and Father Hoare's *Continuity* will be very serviceable.

La Liturgia, in two volumes, is part I of *Il Culto*, which in turn is part of Monsignor Giuseppe Perardi's *La Dottrina Cattolica*. (Turin, Italy. R. Berruti & C. Pp. 415 and 456.)

The first volume is concerned with the general notions of liturgy. The author goes into the question of music, vestments, altars, church buildings, sacred vessels, the baptistry and cemetery, and there is even a chapter on "terminologia liturgica". The second volume takes up liturgical functions. Besides the Mass, there are chapters on

Baptism, Penance, Holy Communion, the holy oils, visiting the sick, ordinations, matrimony, funerals, consecrations, blessings, processions and canonization ceremonies. The chapter "Funzioni non strettamente liturgiche" discusses Benediction of the Most Blessed Sacrament, the Forty Hours' Devotion, the Hour of Adoration, the Way of the Cross, the rosary, and various triduums and novenas. Monsignor Perardi's purpose is to explain the liturgy for the average educated leader. Priests who read Italian will find many a suggestion for Holy Name Society and Sodality instructions in these pages.

From Australia comes English translations of Thesis III and XLIX of Father de la Taille's *Mysterium Fidei.* The translator, the Very Rev. J. Carroll of Hay, N.S.W., has in preparation a translation of the entire work, and these two pamphlets are put on the market as specimens of the project.

The *Mysterium Fidei* is so well known that it is only necessary to say that Father Carroll has turned a good translation. It is difficult, however, to foresee an adequate demand for such a translation. Most priests will have read *Mysterium Fidei* in the Latin, and the theses are much too difficult for the average layman. On the other hand, it is possible that priests who have read the original will also want this translation. (*The One Sacrifice of Calvary and the Supper Chamber;* pp. 32; *Necessity of The Eucharist as a Means of Salvation;* pp. 49. Sydney, Australia. Pellegrini & Co., Ltd.)

The official list of indulgenced prayers and pious practices, as of 31 December, 1937, makes up *Preces et Pia Opera Indulgentiis Ditata.* (Turin. Casa Editrice Marietti. Pp. xviii + 656. 1938.) The collection contains only those concessions of indulgences of which authentic documents are in the archives of the Sacred Penitentiaria. Most of the prayers are in Latin, a number in Italian and a few in French. The volume also contains the *Decretum* of His Eminence Cardinal Lauri, the Canons referring to indulgences, an Appendix listing the indulgences that may be gained by visits to sacred places in Rome, and three very complete indexes. It is a book that should be in the library of every parish rectory.

Father C. W. Rigby of Liverpool has composed the music and written the words for a *Hymn to Our Lady Immaculate* as Patroness of Catholic Action. The music is simple and appealing, but the words of the hymn are quite jejune. On the same sheet is a very short "Salutation". *Christus vincit,* also by Father Rigby, is simple yet effective. J. Fischer & Brother, New York City, are the American agents. The cost, ten cents.

The Rev. Dr. Charles Bruehl has rendered a real service to priests who do not read German by his translation of Bishop Von Streng's treatise on the instructions which are required by Canon 1033 of the Code. *Marriage* avoids controversy and states objectively the Church's concept of marriage and the divine purpose of the sex life in man. The book is short, and can be placed in the hands of young people with some assurance that it will be read, and every assurance that it will be productive of good. (New York, Benziger Brothers. 1939. Pp. 128.)

The dust cover blurb of *Belief in God,* a course of Sermons on Faith, by the Very Rev. Tihamer Toth, translated by V. G. Agotai, edited by the Rev. Newton Thompson, S.T.D., announces the three previous courses in this series as "Sermon Masterpieces by Monsignor Toth". This is to place the present volume at a great disadvantage, for these sermons on faith are not masterpieces, unless we wish to strip the term of almost all its meaning. The content of the sermons themselves is quite acceptable. It is sound doctrine, though expressed with no particular theological brilliance, at least in its translated form. The anecdotes and illustrations which accompany the sermons may be rather useful for the preacher who is at a loss for stories. All and all, the volume is quite as good, as and not much better than other volumes of sermons which are offered to the priests of our country. Saint Louis, B. Herder Book Co., 1938. 176 pages.

Pour Trouver Dieu is something of a curiosity as an attempt to rehabilitate the "method of immanence", the variety

of procedure in apologetics which played such an important rôle in the controversies on Modernism. It is interesting to note that in his treatment of the "method of immanence," Doctor Morice makes not the slightest reference to the words in the encyclical *Pascendi* of Pius X. Any Catholic treatment of that method will necessarily be incomplete without such a reference.

Like most of the other works of "New Apologetics," this seems to be based principally upon a failure to read or to appreciate the scientific treatment of the old. "You begin by demonstrating solidly the existence of God, the necessity, the possibility and the fact of revelation, and finally the divinity of the Church". According to Doctor Morice this is the procedure of the traditional apologetics. A glance at the "De Revelatione" of Garrigou-Lagrange or the Apologetics of Felder would have showed the purpose and the object of Christian apologetics.

It is difficult to see how the teaching of Doctor Morice on the adaptability of the traditional apologetics to the men of our own time can be reconciled with the declaration of the oath against Modernists. (Essai d'Apologétique Experimentale, Par Henri Morice, Docteur és Lettres. Editions Casterman, Tournai et Paris. Pp. 256.)

The French original of *The Three Ways of the Spiritual Life*, by Père Garrigou-Lagrange, O.P., is entitled "Les Trois Conversions et les Trois Voies". The original French title has the advantage of adequately designating the contents of the book. Actually the first three chapters deal with these three conversions of the soul. While the translation of the text is considerably better than that of the title, it does not reach the standard set by the rendering into English of "Perfection Chrétienne et Contemplation". It is, however, an advantage to have this work in English, even in a mediocre version.

This work offers a brief résumé of the teaching contained in the older works of the great theologian of the Angelico. It presents an objective and scientific epitome of the Christian teaching on the nature of and progress in the supernatural life. Those who are interested in advancing in the life of grace can derive more profit from a reading of this little work than from the perusal of a library of formless musings on Christian doctrine which too often masquerade under the name of Catholic spirituality. (New York, Benziger Brothers. Pp. 112.)

In repeated articles and treatises Father R. Garrigou-Lagrange, O.P., has dealt with the subject of mystical theology. His *Perfection chrétienne et contemplation* presents the full development of his doctrine. This work, as translated by Sr. M. Timothea Doyle, O.P., of Rosary College, River Forest, Illinois, has been made available for English readers under the corresponding title *Christian Perfection and Contemplation* (B. Herder Book Company, Saint Louis; pp. xviii and 470). It sets forth the author's conviction that mystical prayer is the normal evolution, rare though it may be, of the endowments of grace, of the virtues and of the gifts of the Holy Ghost. While this theory will hardly prove universally acceptable, especially in its broader generalizations, it is presented against a background replete with harmony. The translation is excellent both in its faithful rendition and in its idiom. The printer's art has still further contributed to making the book a most readable volume.

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